

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3 PORTLAND DIVISION

4
5 DR. RUPA BALA,

6 Plaintiff,

7 v.

Case No. 3:18-CV-00850-HZ

8 OREGON HEALTH AND SCIENCE

9 UNIVERSITY, an Oregon public

10 corporation; DR. CHARLES HENRIKSON,

11 an individual; DR. JOAQUIN CIGARROA,

12 an individual,

13 Defendants.

14
15
16 VIDEOTAPED DEPOSITION OF LISA BROTEN

17 Taken on behalf of the Defendants

18 January 5, 2024

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20
21
22
23
24
25

Page 1

1	BE IT REMEMBERED THAT pursuant to the Oregon	1	EXHIBIT INDEX
2	Rules of Civil Procedure, the deposition of	2	Number Description Page
3	LISA BROTEN was taken before Julie A. Walter,	3	Exhibit 1 10/27/23 Letter to Ellis 11
4	Registered Professional Reporter, Certified	4	and Brischetto from Broten
5	Realtime Reporter, Oregon CSR No. 90-0173, on	5	Exhibit 2 Article "The Vocational and 70
6	January 5, 2024, commencing at the hour of 9:00	6	Rehabilitation Assessment
7	a.m., the proceedings being reported in the law	7	Model (VRAM): Introduction
8	offices of Steve Brischetto, 1500 SW First Avenue,	8	of an Empirically Derived Model
9	Portland, Oregon.	9	of Forensic Vocational and
10	* * *	10	Rehabilitation Assessment
11	APPEARANCES	11	Exhibit 3 Rick Robinson Flow Chart 70
12		12	Exhibit 4 Physician Services Employment 120
13	MATTHEW ELLIS PC	13	Agreement
14	Mr. Matthew C. Ellis	14	Exhibit 5 Revised University of Chicago 122
15	1500 SW First Avenue	15	Residence Class 1998 Graph
16	Portland, Oregon 97201	16	Exhibit 6 Case Notes 123
17	and	17	Exhibit 7 AAMC 2020 Western Comp by 144
18	LAW OFFICE OF STEPHEN BRISCHETTO	18	Medical School Type
19	Mr. Stephen Brischetto	19	Exhibit 8 AAMC 2021 Western Comp by 144
20	1500 SW First Avenue, Suite 1000	20	Medical School Type
21	Portland, Oregon 97201	21	Exhibit 9 AAMC 2022 Private Comp by 144
22	Counsel for the Plaintiff	22	Medical School Type
23		23	Exhibit 10 AAMC 2022 Public Schools 144
24		24	Comp by Medical School Type
25		25	
Page 2		Page 4	
1	APPEARANCES CONTINUED:	1	Exhibit 11 AAMC 2022 All Schools Comp 144
2		2	by Medical School Type
3	STOEL RIVES	3	Exhibit 12 AAMC 2022 Western Comp 144
4	Ms. Brenda Baumgart	4	by Medical School Type
5	Ms. Megan Bradford	5	Exhibit 13 Pinnacle Health Group 146
6	760 SW 9th Avenue, Suite 3000	6	Physician Compensation Reports
7	Portland, Oregon 97205	7	Exhibit 14 Summary Statistics on Medical 146
8	Counsel for the Defendant	8	School Faculty Compensation
9		9	for All Schools MD or
10	Also Present:	10	Equivalent Degree, Clinical
11	Emily Shults - Legal Counsel OHSU	11	Science Departments/Specialties
12	(appearing remotely)	12	Total Compensation (continued)
13	Cassandra Forbess - Legal Counsel OHSU	13	Exhibit 15 Faculty Evaluation of Rupa 177
14	(appearing remotely)	14	Bala University of
15	Dano Capristo - Videographer	15	Pennsylvania Clinical Teaching
16		16	Exhibit 16 1/17/20 Letter to Rupa Bala 189
17		17	from Banner University
18		18	Medical Group
19		19	Exhibit 17 Documented Verbal Discussion 191
20		20	Exhibit 18 12/14/23 Letter to Ellis and 222
21		21	Brischetto from Broten
22		22	Exhibit 19 Broten Handwritten Notes 225
23		23	
24		24	
25		25	
Page 3		Page 5	

<p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: This is the video deposition</p> <p>4 of Lisa Broten, taken by attorney Brenda Baumgart,</p> <p>5 in the matter of Bala versus OHSU. This deposition 09:15:20</p> <p>6 is being held in the law offices of Matthew Ellis,</p> <p>7 Portland, Oregon. Today's date is January 5th,</p> <p>8 2024. We're going on record at 9:15.</p> <p>9 Would you please swear in the witness.</p> <p>10 LISA BROTEN</p> <p>11 was thereupon produced as a witness and, after</p> <p>12 having been duly sworn on oath, was examined and</p> <p>13 testified as follows:</p> <p>14 EXAMINATION</p> <p>15 BY MS. BAUMGART: 09:15:49</p> <p>16 Q. Good morning, Ms. Broten.</p> <p>17 A. Good morning. Broten. Just to tell you, it's</p> <p>18 Broten.</p> <p>19 Q. Broten. Thank you. We've been mispronouncing it</p> <p>20 for quite some time -- 09:15:56</p> <p>21 A. Oh.</p> <p>22 Q. -- so I will do my best, but thank you for</p> <p>23 correcting me.</p> <p>24 A. Well, the hockey player, "Miracle on Ice," my</p> <p>25 cousin, Neal Broten. 09:16:04</p> <p style="text-align: right;">Page 6</p>	<p>1 truth and with that oath comes a penalty of</p> <p>2 perjury. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. I'm not sure how long we'll be going today. We'll</p> <p>5 probably go into the afternoon. Happy to take a 09:17:08</p> <p>6 break any time that you need it. I usually break</p> <p>7 on the hour, but if you need a break beforehand,</p> <p>8 totally fine. Just let me know. Happy to do that.</p> <p>9 Okay?</p> <p>10 A. Um-hum (affirmative response). 09:17:17</p> <p>11 Q. Yes?</p> <p>12 A. Yes.</p> <p>13 Q. And one of the ground rules, if you will, that will</p> <p>14 help us get through this smoothly today is if you</p> <p>15 can answer audibly because the court reporter 09:17:25</p> <p>16 cannot pick up the um-hum, hum-um, nods of the</p> <p>17 head, so if you could use a yes or no, audible</p> <p>18 answer to my question, that would be great. Okay?</p> <p>19 A. Yes.</p> <p>20 Q. Similarly, and we talked a little bit about this 09:17:37</p> <p>21 off the record, if you would allow me to finish my</p> <p>22 question, and I will allow you to finish your</p> <p>23 answer versus us talking over each other. That's</p> <p>24 difficult for Julie to get down in the transcript,</p> <p>25 so we'll try and not speak over each other. Okay? 09:17:51</p> <p style="text-align: right;">Page 8</p>
<p>1 Q. Okay.</p> <p>2 A. So Minnesota, just so you know.</p> <p>3 Q. Perfect. Well, we met briefly off record. My name</p> <p>4 is Brenda Baumgart. I'm the attorney for OHSU and</p> <p>5 Dr. Cigarroa and Henrikson in this case. You 09:16:14</p> <p>6 understand that?</p> <p>7 A. Yes.</p> <p>8 Q. So I will be taking your deposition today in your</p> <p>9 capacity as a disclosed vocational expert for</p> <p>10 plaintiff Dr. Rupa Bala. Correct? 09:16:24</p> <p>11 A. Yes.</p> <p>12 Q. You understand that our interests are adverse?</p> <p>13 A. Yes.</p> <p>14 Q. Have you had your deposition taken before?</p> <p>15 A. Very few times but yes. 09:16:32</p> <p>16 Q. Okay. Well, we'll go over a few ground rules.</p> <p>17 You're probably familiar with this process, and I'm</p> <p>18 sure you've spoken with counsel. We have a</p> <p>19 court reporter and a videographer here today that</p> <p>20 are taking down everything that everybody says, so 09:16:46</p> <p>21 when this case goes to trial, if your testimony is</p> <p>22 different than it is today, we can use this record</p> <p>23 to impeach you. You understand that?</p> <p>24 A. Yes.</p> <p>25 Q. You understand that you took an oath to tell the 09:16:57</p> <p style="text-align: right;">Page 7</p>	<p>1 A. I'll do my best.</p> <p>2 Q. Okay. Very good. Can you hear me okay? Is my</p> <p>3 volume okay?</p> <p>4 A. Yes, yes.</p> <p>5 Q. Okay. Is there any reason today, whether it's 09:18:02</p> <p>6 medication or anything going on in your life, that</p> <p>7 would impact your memory or your ability to testify</p> <p>8 here today fully and accurately?</p> <p>9 A. Not that I know of, no.</p> <p>10 Q. Okay. The few times you've had your deposition 09:18:15</p> <p>11 taken, do you remember, was it in your capacity as</p> <p>12 a designated expert?</p> <p>13 A. Yes.</p> <p>14 Q. Do you remember the last time you had your</p> <p>15 deposition taken? 09:18:29</p> <p>16 A. I think it was the Jones case.</p> <p>17 Q. Who were you retained by, the plaintiff or</p> <p>18 defendant?</p> <p>19 A. The plaintiff in that case.</p> <p>20 Q. What was the nature of that case? 09:18:42</p> <p>21 A. It was ADA issues, and it was against George Fox</p> <p>22 University.</p> <p>23 Q. That was an employment case?</p> <p>24 A. Yes.</p> <p>25 Q. Have you been retained in any other employment 09:18:59</p> <p style="text-align: right;">Page 9</p>

3 (Pages 6 - 9)

<p>1 cases other than the Jones case?</p> <p>2 A. What do you mean by "employment case"?</p> <p>3 Q. A case -- a civil case that involved claims of</p> <p>4 employment discrimination, wrongful discharge,</p> <p>5 retaliation and the like. 09:19:19</p> <p>6 A. Maybe with Veterans, with Susan Jewell, the</p> <p>7 attorney. It may be on my testimony, and that was</p> <p>8 against the VA, I believe.</p> <p>9 Q. Okay.</p> <p>10 A. Does that make sense? 09:19:45</p> <p>11 Q. Yes.</p> <p>12 A. And it was discrimination.</p> <p>13 Q. Okay. Very good. Any other cases that you</p> <p>14 remember off the top of your head? And we'll look</p> <p>15 at your CV in just a moment. 09:19:53</p> <p>16 A. There were two of those cases that I know of. City</p> <p>17 of Salem, but that wasn't -- that wasn't</p> <p>18 employment, so I think that's it.</p> <p>19 Q. Okay. Other than providing deposition testimony as</p> <p>20 an expert, designated expert witness, have you ever 09:20:11</p> <p>21 testified in a deposition in a lay capacity?</p> <p>22 A. No.</p> <p>23 Q. Have you ever been a party to a lawsuit?</p> <p>24 A. No.</p> <p>25 Q. Have you ever served as a juror? 09:20:22</p> <p style="text-align: right;">Page 10</p>	<p>1 psychometric evaluator. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. Are these the totality of your credentials?</p> <p>4 A. Yes.</p> <p>5 Q. In this case, based on the areas of work you were 09:22:13</p> <p>6 asked to perform and resulting opinions, which</p> <p>7 credentials were you relying upon to render your</p> <p>8 opinions, if that question makes sense?</p> <p>9 A. Sure. And one credential that we didn't talk about</p> <p>10 was my licensed clinical social work credential as 09:22:37</p> <p>11 well, which is an important credential in terms of</p> <p>12 being a certified forensic vocational expert.</p> <p>13 Q. Why is that an important credential?</p> <p>14 A. It's a requirement to have a counseling master's in</p> <p>15 certain areas -- and that is one of the areas -- to 09:22:59</p> <p>16 become credentialed as a diplomat. But I basically</p> <p>17 use that credential primarily. I didn't use the</p> <p>18 certified international psychometric evaluator, and</p> <p>19 I also touch on my certified vocational rehab</p> <p>20 counselor background just because I've been doing 09:23:26</p> <p>21 it for 39, 40 years and that's where a lot of my</p> <p>22 expertise comes across in -- especially in job</p> <p>23 development, job search activities and evaluating</p> <p>24 people and occupations.</p> <p>25 Social Security is -- is just good to have, but 09:23:46</p> <p style="text-align: right;">Page 12</p>
<p>1 A. No. I always got out of it because of my work.</p> <p>2 Q. True. Okay.</p> <p>3 (Exhibit 1 marked)</p> <p>4 Q. BY MS. BAUMGART: Ms. Broten, we've handed you what</p> <p>5 we've marked as Exhibit 1 to your deposition. Is 09:21:10</p> <p>6 this your report that you prepared in this case?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Okay. I'm going to start by reviewing your</p> <p>9 credentials. If I'm looking at -- excuse me --</p> <p>10 page 1 of your report, page 1 of your report, the 09:21:25</p> <p>11 first paragraph -- or not the first paragraph.</p> <p>12 Going down to the bottom of the first page under</p> <p>13 the heading "CREDENTIALS," it looks to me like</p> <p>14 there is four areas of work identified. One, a</p> <p>15 certified vocational rehabilitation counselor in 09:21:44</p> <p>16 the state of Oregon and formerly with the state of</p> <p>17 Washington. Is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And then second, a Social Security vocational</p> <p>20 expert. Is that correct? 09:21:55</p> <p>21 A. Yes.</p> <p>22 Q. Third, certified forensic vocational expert.</p> <p>23 Correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then fourth, certified international 09:22:03</p> <p style="text-align: right;">Page 11</p>	<p>1 it's specific to Social Security primarily.</p> <p>2 Q. So it's a no for that; that didn't sort of carry</p> <p>3 into your work here?</p> <p>4 A. I mean, it all -- it all crosses together. I mean,</p> <p>5 it all accumulates together. When you're a voc 09:24:03</p> <p>6 rehab expert or a voc rehab counselor, you use all</p> <p>7 of your experiences and education and training in</p> <p>8 developing your theories and opinions.</p> <p>9 Q. And what about the certified forensic vocational</p> <p>10 expert? I assume that's a credential you used in 09:24:25</p> <p>11 this -- in your work in this matter.</p> <p>12 A. Yeah, that's -- I'm a American board vocational</p> <p>13 expert diplomat.</p> <p>14 Q. Okay. So when you describe yourself sort of to</p> <p>15 your point of your testimony that it's really the 09:24:38</p> <p>16 totality, so when you describe your work in this</p> <p>17 case, how would you describe your expert</p> <p>18 designation? How would you refer to yourself?</p> <p>19 A. A vocational expert.</p> <p>20 Q. Okay. I want to ask a little bit more. You said 09:24:49</p> <p>21 the work you did in this case touches on your</p> <p>22 certification as a vocational rehabilitation</p> <p>23 counselor. Can you first explain to me what a</p> <p>24 certified vocational rehabilitation -- if I can</p> <p>25 speak -- counselor does? 09:25:17</p> <p style="text-align: right;">Page 13</p>

4 (Pages 10 - 13)

<p>1 A. So primarily I started in the workers' comp arena, 2 and I was actually a designated job developer. 3 There were no requirements to be a job developer 4 other than working under certified voc rehab 5 counselor. I obtained my voc rehab counselor 09:25:35 6 certification immediately, just because of my 7 background. I wasn't yet a master's, and it didn't 8 require a master's degree at the time because that 9 was 40 years ago, 30 -- I think it is 40 years now 10 because I've just turned 65. 09:25:52 11 So basically you work with insurance carriers 12 and employers, and when there is a disability with 13 an employer, you're assigned a case to evaluate 14 eligibility for vocational services, and you do a 15 vocational assessment covering several factors, 09:26:14 16 including education, work history, skills, 17 knowledge, abilities, and then you determine, 18 according to the rules that you're working under at 19 the time -- and this would be the Oregon 20 Administrative Rules -- whether or not that person 09:26:38 21 is eligible for vocational services. At that 22 point, you begin working with them if agreed upon 23 by their attorney, which usually I'm always agreed 24 upon -- it's very rare I'm taken off a case -- to 25 assist that individual with developing what we 09:26:56 Page 14</p>	<p>1 thank you for that background. That's helpful, and 2 I've been on the employment side of, right, 3 working, knowing how, so it's good to hear more 4 about how the voc rehab process works in the 5 workers' comp system. 09:28:43 6 The methodology and systems that you just 7 describe, right, you're working with disabled 8 individuals; you're working with doctors. Did you 9 employ any of those same methodologies with your 10 work in this case? 09:28:56 11 A. Some of the -- 12 Q. Which? Just list them for me. 13 A. Okay. So primarily the qualitative interview, the 14 identification of occupation or transferable 15 skills, the identification of labor market and then 09:29:13 16 labor market surveys and contexts and research and 17 then whether or not this individual is employable 18 and placeable because I do return to work job 19 placement as well and monitor the placement of 20 individuals I work with. And earning capacity is 09:29:42 21 discussed because, especially initially when I 22 first started, we look at wage at injury, and the 23 wage at injury currently now is adjusted wage at 24 injury, and we try to determine whether or not 25 there is another job out there that -- 09:30:06 Page 16</p>
<p>1 consider a training plan or a return to work plan. 2 And in that, there is several steps, so in the 3 evaluation process, we're looking at transferable 4 skills; we're looking at what are some jobs that 5 might meet the requirements of that eligibility, 09:27:16 6 and then we move forward with interest testing with 7 other kinds of testing, academic and achievement 8 testing, if needed. We initially start with an 9 interview, qualitative interview, and then we move 10 forward with research. 09:27:40 11 And once job goals are identified, then I 12 utilize different systems that are agreed upon by 13 the State of Oregon services to look at those job 14 goals, evaluate them, evaluate the labor market, 15 make calls to the labor market, conduct job 09:28:01 16 analyses, which are physical descriptions of the 17 job generally, and talk to the doctors about 18 whether or not that individual can perform the 19 chosen goal or goals and then -- and then move 20 forward with developing a training plan. 09:28:21 21 So a training plan consists -- 22 Q. Sorry to interrupt you there, but I want to be 23 mindful of your time and everyone's time. 24 A. Oh, sure. 25 Q. So I think -- let me just ask it this way, and 09:28:31 Page 15</p>	<p>1 Q. Okay. I'm sorry to interrupt you again. Just list 2 them. That's okay. So I think the earning 3 capacity. Any other methodologies that you utilize 4 in your role as a vocational rehabilitation 5 counselor that you utilized in this case? 09:30:22 6 A. Not that I -- not that I can think of. 7 Q. Okay. And you mentioned the qualitative interview. 8 Was that the interview or, I guess, the series of 9 interviews you conducted with Dr. Bala? 10 A. Yes. 09:30:36 11 Q. Did you conduct a qualitative interview with anyone 12 else in your work in this case other than Dr. Bala? 13 A. Not necessarily. I researched the labor market and 14 contacted some individuals that way. 15 Q. Sure. That's different than a qualitative 09:30:51 16 interview, right? 17 A. Um-hum (affirmative response). 18 Q. Yes? 19 A. Yes, it is. 20 Q. Thank you. Currently, if you could give me your 09:30:55 21 best estimate, Ms. Broten, what is the percentage 22 of your workload that involves this vocational 23 rehabilitation counselor work? 24 A. I've gone down because I'm doing more forensic 25 work, so I would say 35 percent, maybe 40, and it 09:31:14 Page 17</p>

5 (Pages 14 - 17)

<p>1 varies when I open and close cases.</p> <p>2 Q. Sure. Understandable. And so what percent of your</p> <p>3 current workload right now is your forensic work?</p> <p>4 A. Including Social Security, civil, marital discord,</p> <p>5 I'd say 60, 50 -- 50 to 60. 09:31:41</p> <p>6 Q. And of that 50 to 60 percent of forensic work,</p> <p>7 which you mentioned includes your Social Security</p> <p>8 work, looks like a lot of dissolution --</p> <p>9 A. Yeah.</p> <p>10 Q. -- marriage work -- 09:31:59</p> <p>11 A. Yes.</p> <p>12 Q. -- and some civil, what percentage of that forensic</p> <p>13 work includes civil matters?</p> <p>14 A. Maybe 20.</p> <p>15 Q. And has that 20 percent been pretty constant over 09:32:11</p> <p>16 the last, say, five years?</p> <p>17 A. Oh, yes. And I'd say maybe even 30 --</p> <p>18 Q. Okay.</p> <p>19 A. -- if you will.</p> <p>20 Q. 20 to 30 percent of your forensic work is on civil 09:32:24</p> <p>21 matters?</p> <p>22 A. Yeah. Maybe even more, but it just depends on</p> <p>23 referrals. I'm thinking of my current caseload.</p> <p>24 Q. That's fine. Just your best estimate is fine.</p> <p>25 A. Okay. 09:32:36</p> <p style="text-align: right;">Page 18</p>	<p>1 Q. What did you need to do to obtain the certification</p> <p>2 as a forensic vocational expert from the ABVE?</p> <p>3 A. It was kind of a long process. You had to submit</p> <p>4 reports. You had to submit references and</p> <p>5 referrals from persons that you worked with, 09:34:14</p> <p>6 attorneys. Mostly for me, it was all attorneys</p> <p>7 that I worked with in the field and testified for</p> <p>8 before. My works were -- my reports were</p> <p>9 peer-reviewed by, I'm sure, three, if not more,</p> <p>10 other experts, and then I had to take a long 09:34:39</p> <p>11 arduous test.</p> <p>12 Q. That you passed, I assume?</p> <p>13 A. That I had to study for, and I passed the first</p> <p>14 time around. A lot of people don't so -- and I --</p> <p>15 I reached that diplomat status right away. 09:34:55</p> <p>16 Q. What is the diplomat status?</p> <p>17 A. It's the higher level. It's the expert level that</p> <p>18 gives you full credential notification or -- or --</p> <p>19 for your experience in the field.</p> <p>20 Q. And so when you mentioned -- and I think you 09:35:15</p> <p>21 mentioned this in Footnote 3 of your report as</p> <p>22 well -- that you had to submit your work product</p> <p>23 for peer review, was that just an initial</p> <p>24 submission, or do you have to do that as part of</p> <p>25 ongoing recertification? 09:35:29</p> <p style="text-align: right;">Page 20</p>
<p>1 Q. Thank you. Okay. And, again, I just want to sort</p> <p>2 of start with not getting into the weeds but just</p> <p>3 broader topics. Your work as a Social Security</p> <p>4 forensic expert, do you employ any methodologies --</p> <p>5 any of the methodologies you employ working as a 09:32:58</p> <p>6 Social Security voc expert did you use in this case</p> <p>7 other than maybe what you've already described,</p> <p>8 anything additional?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Okay. Your certification as a forensic vocational 09:33:09</p> <p>11 expert, you mentioned that you are American Board</p> <p>12 of Vocational Expert diplomat-level certified 2018.</p> <p>13 Is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Is that when you first became certified as a 09:33:24</p> <p>16 forensic vocational expert in 2018?</p> <p>17 A. With -- with that board, yes.</p> <p>18 Q. Prior to being certified with that board, did you</p> <p>19 carry the certification as a forensic vocational</p> <p>20 expert prior to 2018? 09:33:41</p> <p>21 A. No.</p> <p>22 Q. Okay. So 2018 is -- you have been a certified</p> <p>23 forensic vocational expert just since 2018.</p> <p>24 Correct?</p> <p>25 A. Yes. 09:33:53</p> <p style="text-align: right;">Page 19</p>	<p>1 A. No. You have to take CEUs, or continuing education</p> <p>2 credits, that are required to keep your</p> <p>3 certification active on an annual basis.</p> <p>4 Q. And in addition to that, do they do any additional</p> <p>5 peer review, or was that just at the outset? 09:35:43</p> <p>6 A. That's just on the outset.</p> <p>7 Q. Have you become familiar with colleagues who are</p> <p>8 also ABEV-certified?</p> <p>9 A. Some, yes.</p> <p>10 Q. Do you know DT North? 09:36:01</p> <p>11 A. I don't.</p> <p>12 Q. You haven't met him through that organization?</p> <p>13 A. Not yet, but I have read some of his reports.</p> <p>14 Q. Sure. And we'll talk about that.</p> <p>15 A. In the past. Yeah. 09:36:14</p> <p>16 Q. I was just wondering if you knew you him through</p> <p>17 the -- through your affiliation?</p> <p>18 A. No.</p> <p>19 Q. I believe he is currently serving on their</p> <p>20 leadership board. Were you aware of that? 09:36:23</p> <p>21 A. I knew he was serving on something.</p> <p>22 Q. Okay. Is this the first occasion you've had to be</p> <p>23 opposite him on a case?</p> <p>24 A. No. There was a federal case for Longshore.</p> <p>25 Q. Okay. Where he was the designated voc expert on 09:36:38</p> <p style="text-align: right;">Page 21</p>

6 (Pages 18 - 21)

<p>1 the other side?</p> <p>2 A. Yes. But I didn't testify. We didn't testify</p> <p>3 against each other in that case. It was just</p> <p>4 reports.</p> <p>5 Q. Okay. Sorry, we'll try -- sorry, I interrupted 09:36:49</p> <p>6 you. We'll try and let each other finish. It was</p> <p>7 just reports?</p> <p>8 A. Um-hum (affirmative response).</p> <p>9 Q. Yes?</p> <p>10 A. Yes. Sorry. 09:36:55</p> <p>11 Q. Is it fair to assume that folks like DT North who</p> <p>12 have leadership roles with the American Board of</p> <p>13 Vocational Experts are well-qualified vocational</p> <p>14 experts themselves?</p> <p>15 A. I -- yes. I wouldn't -- I wouldn't argue that. 09:37:17</p> <p>16 Q. And I think you said earlier that you did not</p> <p>17 utilize any of your expertise as an international</p> <p>18 psychometric evaluator in this case. Is that</p> <p>19 correct?</p> <p>20 A. Yes. 09:37:37</p> <p>21 Q. And you may have answered this, but let me see if I</p> <p>22 can ask it just as a summary question. So,</p> <p>23 Ms. Broten, which of your credential or credentials</p> <p>24 that we just discussed, in your opinion, qualify</p> <p>25 you to serve as an expert in this case on matters 09:38:01</p> <p style="text-align: right;">Page 22</p>	<p>1 MS. BAUMGART: Okay. Thank you. Then if</p> <p>2 counsel was present for that conversation, I do not</p> <p>3 want -- you are not to testify about it. That's</p> <p>4 privileged. So let me ask the question</p> <p>5 differently. 09:39:25</p> <p>6 MR. BRISCHETTO: Sure.</p> <p>7 MS. BAUMGART: Thanks, Steve.</p> <p>8 Q. BY MS. BAUMGART: So you first had contact with</p> <p>9 Dr. Bala, it sounds like, with counsel present in</p> <p>10 April of 2023. Other than that conversation, did 09:39:29</p> <p>11 you have occasion to speak with Dr. Bala without</p> <p>12 counsel present at any time prior to interviewing</p> <p>13 her for your report?</p> <p>14 A. No.</p> <p>15 Q. Why were you retained in this matter? 09:39:43</p> <p>16 A. I was retained to discuss the -- Ms. -- or</p> <p>17 Dr. Bala's issues in regards to her complaints</p> <p>18 regarding OHSU and to develop an opinion regarding</p> <p>19 loss of earning capacity.</p> <p>20 Q. So I understand the second piece of that, to 09:40:19</p> <p>21 develop an opinion regarding loss of earning</p> <p>22 capacity, but I would like some clarification as to</p> <p>23 the first part of that, Ms. Broten, that you -- I</p> <p>24 believe I may not get it quite correctly but that</p> <p>25 you were retained to opine on issues regarding 09:40:36</p> <p style="text-align: right;">Page 24</p>
<p>1 that you were asked to render an opinion, complete</p> <p>2 an analysis or intend to testify at trial?</p> <p>3 A. All of them except the international psychometric</p> <p>4 evaluator.</p> <p>5 Q. So you were retained by Dr. Bala and her attorneys 09:38:20</p> <p>6 in this case. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And prior to being retained -- and I think, based</p> <p>9 on your agreement, it looks like the formal</p> <p>10 retention happened in or around August of 2023. 09:38:39</p> <p>11 Does that seem right?</p> <p>12 A. Yes.</p> <p>13 Q. Had you ever had occasion to speak with Dr. Bala</p> <p>14 before you were formally retained to serve as the</p> <p>15 vocational expert? 09:38:50</p> <p>16 A. Yes.</p> <p>17 Q. When did you first speak with Dr. Bala?</p> <p>18 A. I want to say it was in April perhaps.</p> <p>19 Q. Of 2023?</p> <p>20 A. 2023. 09:38:58</p> <p>21 Q. What do you remember from that conversation?</p> <p>22 MR. BRISCHETTO: I'm going to ask a question in</p> <p>23 aid of objection. Is that a conversation with</p> <p>24 counsel participating?</p> <p>25 THE WITNESS: Yes. 09:39:13</p> <p style="text-align: right;">Page 23</p>	<p>1 complaints Dr. Bala had with respect to her</p> <p>2 employment at OHSU. Is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Can you further describe to me what you mean by</p> <p>5 that? 09:40:46</p> <p>6 A. I -- I believe it's -- it's basically the issues of</p> <p>7 this case in regards to her statements regarding</p> <p>8 discrimination.</p> <p>9 Q. Oh, I see. Okay. So you were asked to evaluate</p> <p>10 and opine whether or not she had experienced 09:41:10</p> <p>11 discrimination at OHSU?</p> <p>12 A. I don't know if -- if I was asked to actually</p> <p>13 define the discrimination but to look at the legal</p> <p>14 reports in regards to -- and all the reports in</p> <p>15 regards to the complaint. 09:41:38</p> <p>16 Q. What do you mean by the "legal reports"?</p> <p>17 A. That was a miss- --</p> <p>18 Q. That's okay.</p> <p>19 A. That's a misstatement.</p> <p>20 Q. That's okay. You can correct it. That's all 09:41:46</p> <p>21 right. This isn't a test. No, no.</p> <p>22 A. It's just reports on file --</p> <p>23 Q. Okay.</p> <p>24 A. -- essentially.</p> <p>25 Q. Okay. 09:41:56</p> <p style="text-align: right;">Page 25</p>

7 (Pages 22 - 25)

<p>1 A. Reports of record.</p> <p>2 Q. Sure. And you did render an opinion as to whether</p> <p>3 or not she had experienced discrimination or</p> <p>4 retaliation at OHSU. Is that correct?</p> <p>5 A. I did, yes. 09:42:08</p> <p>6 Q. What was your opinion with respect to that?</p> <p>7 A. Is that the experiences she had appeared to -- to</p> <p>8 be harmful to her ability to obtain work.</p> <p>9 Q. And what methodology did you rely upon to reach</p> <p>10 that conclusion? 09:42:34</p> <p>11 A. I looked at employability and placeability in the</p> <p>12 VRAM model, vocational rehabilitation assessment</p> <p>13 model, and researched many articles and support</p> <p>14 documents.</p> <p>15 Q. How did those -- and I'm not sure the -- so is that 09:43:01</p> <p>16 the sum total of the methodology that you employed</p> <p>17 to determine that Dr. Bala's experiences at OHSU</p> <p>18 had appeared to be harmful to her employability?</p> <p>19 A. Say that one more time.</p> <p>20 Q. Sure. Sure. You just shared with me you had 09:43:18</p> <p>21 consulted the VRAM, reviewed some articles. My</p> <p>22 question is that the totality of methodologies that</p> <p>23 you employed to reach your conclusion that</p> <p>24 Dr. Bala's experiences at OHSU were harmful to her</p> <p>25 future employability? 09:43:37</p> <p style="text-align: right;">Page 26</p>	<p>1 workplace?</p> <p>2 A. Well, again, I looked at the reports and the</p> <p>3 exhibits that were offered. I have worked on</p> <p>4 several cases. I've worked with employers a lot,</p> <p>5 all the time, in regards to disability issues, ADA 09:45:34</p> <p>6 issues and so on and so forth.</p> <p>7 Q. What about your work with employers in the</p> <p>8 disability setting, workers' comp setting, Social</p> <p>9 Security setting qualifies you to render an expert</p> <p>10 opinion that an employee such as Dr. Bala has been 09:45:57</p> <p>11 subjected to unlawful discrimination in the</p> <p>12 workplace?</p> <p>13 A. I have worked on other reports with similar</p> <p>14 circumstances and have interviewed individuals and</p> <p>15 employers, and just being the American 09:46:27</p> <p>16 board-certified counselor is a -- or evaluator is a</p> <p>17 designation that allows me to look at those</p> <p>18 situations.</p> <p>19 Q. What about your certification as a board counselor,</p> <p>20 American Board of Vocational Experts counselor, 09:47:03</p> <p>21 qualifies you to render an expert opinion as to</p> <p>22 whether or not there has been discriminatory</p> <p>23 conduct in the workplace?</p> <p>24 A. It's basically training.</p> <p>25 Q. What kind of training? 09:47:18</p> <p style="text-align: right;">Page 28</p>
<p>1 A. In -- in a nutshell, yes.</p> <p>2 Q. Okay. And what qualifications or certifications do</p> <p>3 you have that renders you an expert in determining</p> <p>4 whether or not someone has experienced harmful or</p> <p>5 discriminatory or retaliatory conduct in the 09:43:55</p> <p>6 workplace?</p> <p>7 MR. BRISCHETTO: Objection. Multiple</p> <p>8 questions, and so it's vague.</p> <p>9 Q. BY MS. BAUMGART: Okay. I'll restate.</p> <p>10 What qualifications or credentials do you have 09:44:11</p> <p>11 that render you capable of performing an expert</p> <p>12 analysis as to whether or not an employee such as</p> <p>13 Dr. Bala has experienced harmful conduct in the</p> <p>14 workplace?</p> <p>15 A. Well, all of my qualifications, all my 09:44:30</p> <p>16 certifications, all the training I've had,</p> <p>17 including all the continuing education credits that</p> <p>18 allow us the opportunity to look at barriers to</p> <p>19 employment. I guess that's maybe enough.</p> <p>20 Q. Okay. And same question, breaking that out. And 09:44:54</p> <p>21 your answer may be the same. That's fine, but I</p> <p>22 want to ask it for each. What qualifications or</p> <p>23 credentials do you possess that supports your</p> <p>24 expert opinion as to whether or not an employee</p> <p>25 like Dr. Bala has experienced discrimination in the 09:45:11</p> <p style="text-align: right;">Page 27</p>	<p>1 A. The training that you go to in gaining CEUs and</p> <p>2 looking at barriers and -- to employment, including</p> <p>3 those of -- of research articles and determining</p> <p>4 whether or not that might -- that there may have</p> <p>5 been behaviors that were displayed by the employer 09:47:48</p> <p>6 that could harm an individual's potential.</p> <p>7 Q. Even if you were observing through your, let's say,</p> <p>8 qualitative interview with someone like Dr. Bala or</p> <p>9 another employee and they share their experience</p> <p>10 with you, how do you know that that's really what 09:48:20</p> <p>11 happened? You're just assuming that -- you're</p> <p>12 basing your opinion on the experience that they're</p> <p>13 sharing with you. Is that correct?</p> <p>14 A. Well, that's partly true, yes.</p> <p>15 Q. What additional steps, if any, do you take to find 09:48:35</p> <p>16 out if there actually was any harmful or</p> <p>17 discriminatory conduct before you opine that it</p> <p>18 did, in fact, occur and impact this individual's</p> <p>19 future employability?</p> <p>20 A. Well, you look at -- again, I looked at the exhibit 09:48:53</p> <p>21 list. I looked at the depositions of other</p> <p>22 parties, and some of those were with OHSU. And I</p> <p>23 look at the results of the employment search in</p> <p>24 general and some of the statements offered.</p> <p>25 Q. So I just want to stay focused on your opinion 09:49:21</p> <p style="text-align: right;">Page 29</p>

8 (Pages 26 - 29)

<p>1 about whether or not Dr. Bala experienced 2 discriminatory, retaliatory or harmful conduct in 3 the workplace. I want to stay focused on that, 4 that portion of your report. Does that make sense? 5 Yes? 09:49:37 6 A. Okay. 7 Q. So is it your testimony that part of what informs 8 your decision as to whether or not there has been 9 discriminatory, retaliatory or harmful conduct in 10 the workplace is informed by their subsequent job 09:49:46 11 search? 12 A. In part, yes. 13 Q. And I think I need to go back to -- following 14 counsel's objection, I had split my question up, so 15 I'm going to ask you the same. What qualifications 09:50:02 16 or credentials do you possess that you believe 17 qualifies you to provide an expert opinion as to 18 whether or not an employee like Dr. Bala has 19 experienced retaliation in the workplace? 20 A. Just my review, my interview, my review of file 09:50:19 21 documents, the information -- primarily the file 22 documents are what I looked at. 23 Q. Thank you. And when you say -- excuse me, when you 24 say "file documents," I think that you've listed 25 those out in the report. These would be documents 09:50:45 Page 30</p>	<p>1 Q. Have you ever worked in human resources? 2 A. No. 3 Q. Do you have any legal training? 4 A. No. I am an employer. I do hire. 5 Q. How many employees do you have? 09:52:04 6 A. I have one employee right now, but I have hired a 7 couple others in the past -- 8 Q. Yes. 9 A. -- five years, so -- 10 Q. You've been on your own about five years, 09:52:13 11 Ms. Broten? 12 A. I'd say 2017, I believe. 13 Q. And sorry if I asked you this at the top of my 14 questioning, but just to confirm, was it -- is it 15 your opinion that Dr. Bala did experience 09:52:33 16 discrimination while she was at OHSU? 17 A. I believe she did. 18 Q. And do you base that opinion on anything other than 19 what we've just discussed? 20 A. No. 09:52:53 21 Q. Okay. Similar question. Is it your expert opinion 22 that Dr. Bala suffered retaliation while she was at 23 OHSU? 24 A. From my research, possibly. 25 Q. You're not sure about that one? 09:53:09 Page 32</p>
<p>1 you had available to you to perform your work? 2 A. Yes. 3 Q. Okay. Anything in addition to those file 4 documents? 5 A. In the report, I think I got something yesterday 09:50:53 6 that was an MGMA EP salary. 7 Q. I'm sorry, what -- you received a document from 8 whom yesterday? 9 A. I received it from Mr. Ellis, who received it from 10 your office. 09:51:17 11 Q. Okay. 12 A. That's not listed. 13 Q. But if you just received it yesterday, that would 14 have been something you had when you prepared your 15 report. Correct? 09:51:27 16 A. No. 17 Q. Do you have any training in human resources? 18 A. That's a good question. I work with human 19 resources. 20 Q. Do you have any training? Have you undertaken any 09:51:45 21 classes? Do you have any certifications, SPHR? 22 Ever -- 23 A. No. 24 Q. No? 25 A. Of course not. 09:51:53 Page 31</p>	<p>1 A. Well, I believe I discuss it in the report 2 somewhere. 3 Q. Right. And I'm just wondering, as you sit here 4 today and thinking about your testimony at trial, 5 will your opinion and testimony at trial be that 09:53:21 6 OHSU retaliated against Dr. Bala? 7 A. Define "retaliation." 8 Q. You use it in your report. I'm just -- 9 A. Okay. 10 Q. I'm just purely trying to understand your opinions 09:53:36 11 and whether or not -- so let me start with this, 12 Ms. Broten: Is it your opinion that Dr. Bala was 13 subjected to retaliation by OHSU? 14 A. Can I look in my report? 15 Q. We're going to look at it in a minute. I just 09:54:04 16 would like from your memory now, and then we'll go 17 through it in detail. 18 A. I'd like to defer that. 19 Q. Okay. That's fair enough. 20 A. Okay. 09:54:15 21 Q. But you do -- you are confident that you do -- you 22 have opined and do intend to testify at trial that 23 your expert opinion is that Dr. Bala was 24 discriminated against by OHSU. Correct? 25 A. Yes. 09:54:30 Page 33</p>

9 (Pages 30 - 33)

<p>1 MS. BAUMGART: Okay. Let's take a break. 2 (RECESS 9:54 to 10:05) 3 Q. BY MS. BAUMGART: Ms. Broten, we're back on the 4 record. You understand you're still under oath? 5 A. Yes. 10:05:34 6 Q. Earlier we were talking about the first time that 7 you had occasion to speak with Dr. Bala, and you 8 testified about a meeting in or around April 2023 9 where counsel was also present. Correct? 10 A. Yes. 10:05:47 11 Q. In that meeting -- and don't tell me what was 12 discussed, but in that meeting, were the facts of 13 this case discussed? 14 A. In general terms, yes. 15 Q. Okay. And was the data that you -- was data about 10:05:58 16 this case that you relied upon discussed? For 17 example, did Dr. Bala or her attorneys provide you 18 with facts or data that you considered in forming 19 your opinions? 20 A. No. 10:06:15 21 MR. BRISCHETTO: I'm going to instruct -- 22 instruct her not to answer that question. 23 MS. BAUMGART: Well, I mean, we can take this 24 up at a break, but, for the record, I think that 25 under FRCP 26C, that, while certain communications 10:06:24 Page 34</p>	<p>1 A. Well, I was -- I was provided all the file 2 documents. 3 Q. Right. And separate from that. We have -- 4 everybody has the file documents. We understand 5 how that works. You were obviously given 10:07:46 6 documents -- 7 A. Right. 8 Q. -- but I'm just talking about a conversation, 9 either a videoconference or a telephone call or 10 in-person meeting. Did you ever have a meeting 10:07:54 11 with Dr. Bala and counsel where you were provided 12 with any facts or data that you ultimately 13 considered in forming your opinions? 14 A. I don't believe so. 15 Q. Do you think it's possible? 10:08:09 16 A. Would this be after I was hired or -- 17 Q. Yes, yes. 18 A. Oh, after I was hired. 19 Q. Yes. 20 A. I don't even know if we met together as a group. I 10:08:16 21 did my interviews with Dr. Bala and sought out 22 information from -- from her. So the interviews 23 themselves provide me much information. I attempt 24 to read the file. In this case, the file was very 25 huge, very large. 10:08:44 Page 36</p>
<p>1 are protected regardless of the form of the 2 communications, communications that identify facts 3 or data that the parties' attorneys provided and 4 the expert considered in forming the opinions to be 5 expressed are not protected. So I think I'm 10:06:46 6 allowed to inquire. I'm not asking right now for 7 the substance, but I am entitled to inquire whether 8 or not. 9 MR. BRISCHETTO: I'm going to let you go ahead 10 and ask whether -- that question, whether you were 10:06:57 11 supplied facts or data in that initial conversation 12 that you relied upon to develop your report. 13 MS. BAUMGART: Well, thank you for asking my 14 question, Steve. 15 MR. BRISCHETTO: That's all right. 10:07:11 16 Q. BY MS. BAUMGART: That's a fair question. 17 A. No. They were interviewing me primarily. 18 MR. BRISCHETTO: And that's -- yeah. 19 THE WITNESS: I don't have to say that, right? 20 MR. BRISCHETTO: You don't have to say that. 10:07:20 21 Q. BY MS. BAUMGART: Okay. And that's fine. And 22 that's fine. So at any point, have you had any 23 conversations with Dr. Bala and counsel where you 24 were provided with facts or data that you 25 considered in forming your opinions? 10:07:32 Page 35</p>	<p>1 Q. Okay. And we're going to talk about that, 2 Ms. Broten. 3 A. Okay. 4 Q. I just want to stay focused on my question, which 5 was just if you learned at any time, from the time 10:08:52 6 you were retained up until today, any facts or data 7 that you relied upon in forming your opinions that 8 came to you through conversations with counsel? 9 A. Not that I -- not that I recollect. 10 Q. Okay. And if you think of something today, please 10:09:04 11 let me know. 12 A. Sure. 13 Q. This is my one opportunity to visit with you under 14 oath. Okay? 15 A. Sure. 10:09:11 16 Q. Okay. And we'll talk about your conversations with 17 Dr. Bala. 18 A. Okay. 19 Q. We'll talk about those interviews. 20 Okay. Before the break, we were talking about 10:09:17 21 your expert opinion you intend to provide at trial 22 that Dr. Bala was subjected to discrimination by 23 OHSU. And I want to ask a few follow-up questions 24 about that, Ms. Broten. When I had asked you, I 25 think, a couple times what it is about your 10:09:38 Page 37</p>

10 (Pages 34 - 37)

<p>1 qualifications or what you relied upon that</p> <p>2 qualifies you to give that expert opinion, my</p> <p>3 interpretation of your answer -- and correct me if</p> <p>4 I'm wrong -- was sort of everything, right? This</p> <p>5 is what you do. You've been doing this for a long 10:09:56</p> <p>6 time. You read articles. You go to conferences.</p> <p>7 Things like that. Is that correct?</p> <p>8 A. That's in part correct, yes.</p> <p>9 Q. Okay. What am I missing? Correct the other part</p> <p>10 of that or add to the other part of that. 10:10:07</p> <p>11 A. So I believe your question was very poignant and</p> <p>12 asked whether I believe she was discriminated</p> <p>13 against. Am I correct in saying that?</p> <p>14 Q. My question, which I think I asked you several</p> <p>15 times and you answered in the affirmative several 10:10:21</p> <p>16 times, was whether, in your expert opinion, you</p> <p>17 concluded that Dr. Bala had been discriminated</p> <p>18 against by OHSU, which I believe you answered in</p> <p>19 the affirmative. Is that still your testimony?</p> <p>20 A. So what I believe is Dr. Bala's story. As a 10:10:33</p> <p>21 vocational expert, we are ethically challenged to</p> <p>22 believe our interviewee, our client. I, on a</p> <p>23 personal note, when reviewing all the documents</p> <p>24 that I did, can make a, you know, a determination</p> <p>25 that, yeah, there was some discrimination here, or 10:11:15</p> <p style="text-align: right;">Page 38</p>	<p>1 MR. BRISCHETTO: Objection. Misstates the</p> <p>2 record.</p> <p>3 Go ahead.</p> <p>4 THE WITNESS: Oh, I don't want to change my</p> <p>5 opinion -- 10:13:03</p> <p>6 Q. BY MS. BAUMGART: Okay.</p> <p>7 A. -- because I do personally have an opinion</p> <p>8 regarding discrimination, and so from what I saw</p> <p>9 and reviewed and when interviewing Dr. Bala, I do</p> <p>10 have an opinion regarding that, but it's more of a 10:13:23</p> <p>11 personal nature. It's not necessarily a part of</p> <p>12 what I was asked to do in my loss-of-earning</p> <p>13 capacity.</p> <p>14 Q. How do you differentiate whether or not you have a</p> <p>15 personal opinion versus -- well, let me ask it this 10:13:43</p> <p>16 way: You are testifying here today and will</p> <p>17 testify at trial as an expert vocational -- a</p> <p>18 vocational expert. Correct?</p> <p>19 A. Um-hum (affirmative response).</p> <p>20 Q. Yes? 10:13:55</p> <p>21 A. Yes.</p> <p>22 Q. You understand that you will not be testifying in</p> <p>23 any other capacity. Is that right?</p> <p>24 A. Yes.</p> <p>25 Q. So when you take the stand, how do you intend to 10:14:00</p> <p style="text-align: right;">Page 40</p>
<p>1 I think you even mentioned retaliation, which, you</p> <p>2 know, as well in one of your questions. But my job</p> <p>3 was to discuss the harm that Dr. Bala had in terms</p> <p>4 of when leaving OHSU, when at OHSU and when leaving</p> <p>5 OHSU, the harm being loss of earning capacity, if 10:11:42</p> <p>6 that makes sense.</p> <p>7 Q. I'm not sure that answered my question. I need to</p> <p>8 know if you changed your testimony and thus your</p> <p>9 opinion. So, Ms. Broten, is it your opinion as</p> <p>10 stated in your report that Dr. Bala was subjected 10:12:05</p> <p>11 to discrimination by OHSU?</p> <p>12 A. So I wasn't asked to determine if she was</p> <p>13 discriminated against.</p> <p>14 Q. And even if you -- oh, I'm sorry. Go ahead.</p> <p>15 A. So giving an opinion would be not a part of what I 10:12:23</p> <p>16 was asked to do in this case.</p> <p>17 Q. So I just going to note for the record, which will</p> <p>18 speak for itself, that I think your testimony has</p> <p>19 changed from before the break. Did you have an</p> <p>20 opportunity to consult with counsel or did you 10:12:45</p> <p>21 speak with counsel during the break?</p> <p>22 A. I did.</p> <p>23 Q. And now your testimony is that you were not asked</p> <p>24 and did not form an opinion as to whether or not</p> <p>25 Dr. Bala experienced discrimination at OHSU? 10:12:54</p> <p style="text-align: right;">Page 39</p>	<p>1 explain to the jury that your opinion is that</p> <p>2 Dr. Bala experienced discrimination at OHSU?</p> <p>3 MR. BRISCHETTO: Objection. Improper</p> <p>4 foundation.</p> <p>5 Go ahead. 10:14:17</p> <p>6 Q. BY MS. BAUMGART: Go ahead.</p> <p>7 A. So in formulating the opinion of loss of earning, I</p> <p>8 took in all of the documents that I prior disclosed</p> <p>9 to you, you know, the entire file review, interview</p> <p>10 with Dr. Bala, and attempting to clarify and review 10:14:40</p> <p>11 the job search records, which were very telling,</p> <p>12 and had to establish harm based on some of the</p> <p>13 issues that were presented, I believe, in the -- in</p> <p>14 the complaint and in my conversations with</p> <p>15 Dr. Bala. Does that make sense? 10:15:22</p> <p>16 Q. Well, I'm just wanting to know how you will explain</p> <p>17 your opinion that Dr. Bala was discriminated</p> <p>18 against when you take the stand and testify before</p> <p>19 the jury.</p> <p>20 MR. BRISCHETTO: Improper foundation. 10:15:32</p> <p>21 Go ahead.</p> <p>22 Q. BY MS. BAUMGART: I'll rephrase the question.</p> <p>23 Do you intend to share your opinion with the</p> <p>24 jury that you believe Dr. Bala was discriminated</p> <p>25 against? It sounds like you do. 10:15:41</p> <p style="text-align: right;">Page 41</p>

11 (Pages 38 - 41)

<p>1 A. The evidence that I read through the documents and 2 my conversations with Dr. Bala appear to reflect 3 discrimination. 4 Q. Okay. So you intend to share that with -- do you 5 intend to share that with the jury? Sounds like 10:16:01 6 yes. 7 A. If you're going asking to ask me the question, 8 probably. 9 Q. Okay. And how will you explain to the jury how you 10 arrived at that opinion? 10:16:09 11 A. And it would be through research of the documents, 12 you know, looking all the rec- -- looking at all 13 the records reviews and in my discussions with 14 Dr. Bala primarily. 15 Q. Okay. And you'll share with the jury that -- how 10:16:23 16 you arrived at this conclusion was that you, in 17 your role as an expert, believe Dr. Bala's story? 18 MR. BRISCHETTO: Objection. Misstates the 19 testimony. 20 Q. BY MS. BAUMGART: Is that fair? 10:16:35 21 MR. BRISCHETTO: Go ahead. 22 THE WITNESS: I do believe Dr. Bala's story, 23 yes. 24 Q. BY MS. BAUMGART: And you intend that share that 25 with the jury? 10:16:41</p> <p style="text-align: right;">Page 42</p>	<p>1 just asking do you know what she's even alleging by 2 way of discrimination? 3 A. I -- again, I don't know. I'd have to refer to the 4 file and look at all the documents -- 5 Q. Okay. 10:17:55 6 A. -- and answer that question. 7 Q. Well, I'll represent to you that some of her claims 8 involve discrimination based on race and gender. 9 Were you aware of that? 10 A. Not necessarily. 10:18:06 11 Q. Okay. 12 A. Not totally, no. 13 Q. If you took -- when you take the stand, how will 14 you explain the elements of why you conclude 15 Dr. Bala was subjected to race discrimination? How 10:18:17 16 will you explain that to the jury? 17 MR. BRISCHETTO: Objection. Assumes a fact not 18 in evidence. 19 Go ahead. 20 Q. BY MS. BAUMGART: Go ahead. 10:18:26 21 A. I don't know if I would. 22 Q. Okay. And the same question: Would you be able to 23 explain to the jury the legal elements of a gender 24 discrimination claim? 25 A. No. 10:18:39</p> <p style="text-align: right;">Page 44</p>
<p>1 MR. BRISCHETTO: Objection. Asked and 2 answered. 3 Go ahead. 4 Q. BY MS. BAUMGART: Go ahead. 5 A. Yes. 10:16:45 6 Q. How will you explain to the jury the elements of -- 7 well, first let me ask you this: When we're 8 talking about discrimination broadly -- and I know 9 you've testified a lot of the work you do as a voc 10 rehab expert is about disability, right, 10:16:58 11 disability, ADA, things like that. Correct? 12 A. A lot of it, yes. 13 Q. Are you aware of the underlying types of 14 discrimination claims in this particular case? Do 15 they involve the ADA? 10:17:12 16 A. No, I'm not aware. 17 Q. Okay. You don't know what Dr. Bala is even 18 alleging by way of discrimination? 19 A. No. I read the file. I don't recall all the facts 20 at this moment. 10:17:26 21 Q. Sure. And I know that's fair. It's a big file, 22 and I'm certainly not asking you to have recalled 23 all the facts, but you stated that you have what 24 seems to be an unequivocal opinion that she was 25 discriminated against in the workplace, and I'm 10:17:39</p> <p style="text-align: right;">Page 43</p>	<p>1 MR. BRISCHETTO: Same objection. 2 Go ahead. 3 Q. BY MS. BAUMGART: Would you be able to explain to 4 the jury the elements of retaliation? 5 MR. BRISCHETTO: Continuing objection. 10:18:47 6 Go ahead. 7 THE WITNESS: I know some about that, but no. 8 Q. BY MS. BAUMGART: You had asked me earlier how I -- 9 how I would define "retaliation." Unfortunately, I 10 get to ask the questions today. How do you define 10:19:01 11 "retaliation," Ms. Broten? 12 A. Well, the research I have done -- and I think I -- 13 I believe I spoke about it in the report somewhat, 14 and now I have to remember everything. 15 Q. That's okay. Just give me your best -- your 10:19:20 16 best -- sitting here today, you testified you've 17 been doing this for nearly 40 years. I know you're 18 not a lawyer. How do you define -- what does 19 "retaliation" mean to you? 20 A. It's the behavior basically of an organization 10:19:31 21 and/or individuals within the organization that 22 maybe harm another -- an employee or a person 23 who -- I guess that's the big -- best explanation I 24 have at this moment. 25 Q. Do you know any of the specific legal elements of a 10:19:59</p> <p style="text-align: right;">Page 45</p>

12 (Pages 42 - 45)

<p>1 retaliation claim?</p> <p>2 A. I don't.</p> <p>3 Q. Do you know any of the specific legal elements of a</p> <p>4 gender discrimination claim?</p> <p>5 A. You know, I did some reading about it, but I 10:20:11</p> <p>6 couldn't give you information, no.</p> <p>7 Q. Do you know any of the specific elements of a race</p> <p>8 discrimination claim?</p> <p>9 A. No.</p> <p>10 Q. You testified earlier about sort of, again, 10:20:21</p> <p>11 generally, trainings you had participated in or</p> <p>12 articles you've read. Can you point to me what</p> <p>13 specifically -- what training specifically, whether</p> <p>14 it was a conference or a continuing education</p> <p>15 course, that taught you about discrimination or 10:20:46</p> <p>16 retaliation in the workplace?</p> <p>17 A. I can't pinpoint one. I have done this for 40</p> <p>18 years, and I get 40 to 60 CEUs every year, and, I</p> <p>19 mean, I took a class, even a master's class, in</p> <p>20 multicultural -- anyway, so, no, I couldn't point 10:21:09</p> <p>21 to one.</p> <p>22 Q. Okay. What about the last five years, could you</p> <p>23 point to any single continuing education class,</p> <p>24 training, conference that you attended that</p> <p>25 educated you on how to evaluate discrimination or 10:21:31</p> <p style="text-align: right;">Page 46</p>	<p>1 Q. All right. And would those records that you just</p> <p>2 described, Ms. Broten -- would they -- they would</p> <p>3 encompass any training that you would have</p> <p>4 undertaken that would cover this issue of</p> <p>5 identifying discrimination or retaliation in the 10:23:03</p> <p>6 workplace if, indeed, you took that type of course,</p> <p>7 right?</p> <p>8 A. They should.</p> <p>9 Q. Okay.</p> <p>10 A. Yeah. 10:23:13</p> <p>11 Q. My question is really would there be any other</p> <p>12 record where you might have taken that type of</p> <p>13 course other than these records you just described?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Thank you. You testified that you believe 10:23:27</p> <p>16 Dr. Bala's story. Is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. What is her story?</p> <p>19 A. It's a -- it's a long story.</p> <p>20 Q. Give me the condensed version. 10:23:43</p> <p>21 A. Okay. I'll do my best. Dr. Bala said that</p> <p>22 essentially, while she was at OHSU, there were</p> <p>23 incidents which were interesting maybe -- I don't</p> <p>24 know if that's the right word. I'm trying to think</p> <p>25 of the right word. That were concerning. That's a 10:24:21</p> <p style="text-align: right;">Page 48</p>
<p>1 retaliation in the workplace?</p> <p>2 A. I couldn't give you something, no.</p> <p>3 Q. And do you think that's because you didn't attend</p> <p>4 any such class, or you just don't remember?</p> <p>5 A. I really just don't remember. 10:21:45</p> <p>6 Q. Would there be anything that would help refresh</p> <p>7 your recollection? Like do you keep -- you know, I</p> <p>8 know for us, like we keep -- all of our continuing</p> <p>9 legal education, for example, we --</p> <p>10 A. Sure. 10:21:59</p> <p>11 Q. -- have to submit to the Oregon State Bar. Do you</p> <p>12 have to do a similar type of report?</p> <p>13 A. I do. I send one to ABVE, and I send one to the</p> <p>14 NASW, National Association of Social Workers, and I</p> <p>15 send one in to the State of Oregon, so yes. 10:22:14</p> <p>16 Q. Do you have to do that -- all of those on an annual</p> <p>17 basis?</p> <p>18 A. No. ABVE is annual, and then NASW is every two</p> <p>19 years, and VRC is every five years.</p> <p>20 Q. Do you keep records of those submissions? 10:22:37</p> <p>21 A. I do.</p> <p>22 Q. Do you have those in your possession currently?</p> <p>23 A. At my office.</p> <p>24 Q. Yes, no, sorry. Not as you're sitting here.</p> <p>25 A. I have them at my office. 10:22:48</p> <p style="text-align: right;">Page 47</p>	<p>1 better word -- to her in regards to behavior,</p> <p>2 pointing out her behavior, discussions with -- I</p> <p>3 guess statements from staff and statements</p> <p>4 regarding her personality that she thought were odd</p> <p>5 and maybe overexaggerated -- I don't think that's 10:25:02</p> <p>6 the word she used -- and caused her to defend</p> <p>7 herself frequently.</p> <p>8 And in that process, she also indicated that</p> <p>9 she was -- her contract would be terminated, not</p> <p>10 renewed maybe. I don't know the actual lingo at 10:25:28</p> <p>11 this moment. And she essentially left there,</p> <p>12 resigned, because her opinion is that a terminated</p> <p>13 contract and/or a non-renewed contract would</p> <p>14 possibly harm her ability to obtain work, and she</p> <p>15 also indicated that she wanted to stay at OHSU and 10:26:05</p> <p>16 made many attempts to remedy or attempt to change</p> <p>17 possibly the opinion of termination.</p> <p>18 I'm trying to be short, and I'm not very short.</p> <p>19 Q. That's okay. You're doing a great job.</p> <p>20 A. And then -- then her experiences afterwards, which 10:26:29</p> <p>21 she didn't think would harm her ability to work.</p> <p>22 She didn't even think about that as much until she</p> <p>23 started getting a lot of no's, and persons were</p> <p>24 indicating to her that she interviewed with that</p> <p>25 there were concerns regarding her time at OHSU. 10:26:59</p> <p style="text-align: right;">Page 49</p>

13 (Pages 46 - 49)

<p>1 And I believe she said about six months after she 2 started, maybe five to six months after she started 3 looking for work, even though some of that time was 4 on a vacation, extended vacation, I believe, that 5 she started putting two and two together or started 10:27:29 6 realizing that, gee, something isn't right here. 7 How come? And that's basically the story and then 8 that it kind of continued throughout her job-search 9 process.</p> <p>10 Q. Thank you. And I realize I started by asking you 10:27:51 11 to give me a brief version. You said it's long. 12 But is there any other -- you know, obviously there 13 are more details, but is there anything else, in 14 your mind, that really stands out to you about her 15 story that was a primary influencer in your expert 10:28:06 16 opinion that you didn't share just now that you 17 want to share?</p> <p>18 MR. BRISCHETTO: Objection. Vague. 19 Go ahead.</p> <p>20 THE WITNESS: If you want me to keep a brief 10:28:16 21 story, that's as brief as I can get. There may be 22 more, and I can -- if I remember, how about if I 23 bring it up?</p> <p>24 Q. BY MS. BAUMGART: That's great. That's great. 25 A. Okay. 10:28:32</p> <p style="text-align: right;">Page 50</p>	<p>1 about this but just to follow up. Looking 2 specifically at your report, Ms. Broten, that last 3 sentence of paragraph 1, "I was asked to determine 4 the wages Dr. Bala may have been able to garner if 5 she was able to stay comfortably in her specialized 10:30:09 6 medical field at OHSU without experiencing 7 discrimination and what loss she suffered from the 8 discrimination." Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Is that an accurate statement of what you were 10:30:22 11 asked to opine upon in your expert capacity?</p> <p>12 A. Well, and I think the words were initially "harm," 13 you know, from her experience at OHSU, so yes.</p> <p>14 Q. Yes, this is accurate? Yes?</p> <p>15 A. Yes. 10:30:43</p> <p>16 Q. Do you use the words -- for purposes of your 17 analysis and your work in this case and ultimately 18 your expert opinions, do you use the words "harm" 19 and "discrimination" interchangeably, or do those 20 mean different things to you? 10:31:00</p> <p>21 A. In this case, they meant the same thing.</p> <p>22 Q. So when you use the word "harm," you're really -- 23 that means "discrimination" to you and vice versa?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. I think this is what I've heard you testify 10:31:14</p> <p style="text-align: right;">Page 52</p>
<p>1 Q. And we'll go through some things in your report. 2 Thank you.</p> <p>3 Ms. Broten, what, if anything, did you do to 4 verify Ms. -- excuse me, Dr. Bala's story about 5 what her experience was at OHSU? What, if 10:28:43 6 anything, did you do to verify that?</p> <p>7 A. I didn't verify.</p> <p>8 Q. You took her at her word, it sounds like?</p> <p>9 A. I did.</p> <p>10 Q. Okay. 10:28:54</p> <p>11 A. Yes.</p> <p>12 Q. Okay. I want to turn back to your report. You 13 have that still in front of you. Exhibit 1. And I 14 think you've already testified but just to confirm 15 that you were retained, as we see in the first 10:29:12 16 sentence of your report, to perform an 17 earning capacity determination. Is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. What qualifies you to perform that expert analysis?</p> <p>20 A. Well, that's my training and experience over the 10:29:27 21 years.</p> <p>22 Q. And you, indeed, did perform this analysis in this 23 case?</p> <p>24 A. I did.</p> <p>25 Q. The last sentence -- and I think that we've talked 10:29:37</p> <p style="text-align: right;">Page 51</p>	<p>1 to, but I want to confirm that the expert opinions 2 you were asked to render, the earning capacity and 3 then the -- that last sentence. I'm not just going 4 to reread the last sentence of the first paragraph. 5 So basically the work you were asked to do, which 10:31:44 6 is in the first paragraph of your report. Correct?</p> <p>7 A. Right.</p> <p>8 Q. Okay. So the scope of work you were retained to 9 perform, you did, in fact, render expert opinions 10 on these issues. Correct? 10:31:58</p> <p>11 A. I rendered an opinion on loss of earning capacity.</p> <p>12 Q. Okay. And you also rendered an expert opinion on 13 that -- the last piece where you were asked to 14 determine the wages, right, her, I think --</p> <p>15 A. Her ability to earn. 10:32:14</p> <p>16 Q. Right. Okay.</p> <p>17 A. Yes.</p> <p>18 Q. So yes. In performing your work and your analysis 19 to arrive at your opinions, all of that was through 20 the lens that Dr. Bala had been harmed or 10:32:30 21 discriminated against in her employment at OHSU.</p> <p>22 Correct?</p> <p>23 A. Yeah. I -- yes.</p> <p>24 Q. Okay. Are you generally familiar -- and I know you 25 don't need to recite them, but are you generally 10:32:48</p> <p style="text-align: right;">Page 53</p>

14 (Pages 50 - 53)

<p>1 familiar, given your ongoing work as a forensic in</p> <p>2 civil cases, what your written report must contain</p> <p>3 under the applicable Federal Rules of Civil</p> <p>4 Procedure? Are you generally aware of that?</p> <p>5 A. Generally, yeah. I'm often reminded by attorneys, 10:33:03</p> <p>6 you need to include all this information.</p> <p>7 Q. Fair enough. That's our job. Do you believe that</p> <p>8 your report complies with those requirements?</p> <p>9 A. I hope so.</p> <p>10 Q. Okay. Do you know -- and if it's helpful to you, 10:33:18</p> <p>11 again, not to -- I just want to sort of speed this</p> <p>12 along. I think you know that your report also</p> <p>13 contains your CV --</p> <p>14 A. Right.</p> <p>15 Q. -- and your prior testimony list. Is that correct? 10:33:31</p> <p>16 A. Yes.</p> <p>17 Q. And your CV, is your CV up to date?</p> <p>18 A. Yes.</p> <p>19 Q. And the list of testimony up to date?</p> <p>20 A. Yes. 10:33:45</p> <p>21 Q. Okay.</p> <p>22 A. Well, hold on.</p> <p>23 Q. Sure.</p> <p>24 A. Let me take a look. There might have been one more</p> <p>25 case, a divorce case, that I -- 10:34:00</p> <p style="text-align: right;">Page 54</p>	<p>1 type of a rubber bullet from a police, Salem</p> <p>2 police.</p> <p>3 Q. Okay.</p> <p>4 A. And that was it.</p> <p>5 Q. Okay. Thank you. And then we go down to the 10:35:36</p> <p>6 Gargiulo. I'm probably mispronouncing that.</p> <p>7 A. I do too, yes.</p> <p>8 Q. Okay. That was a civil case. Is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Was that an employment case? 10:35:48</p> <p>11 A. Yes. Mr. Gargiulo was -- it was discrimination,</p> <p>12 employment discrimination, against D&R Masonry. I</p> <p>13 think he was terminated. Felt he was</p> <p>14 terminated -- terminated wrongfully.</p> <p>15 Q. You testified on behalf of the defense in that 10:36:11</p> <p>16 case?</p> <p>17 A. Yes.</p> <p>18 Q. And then the Jones v. George Fox case, which you</p> <p>19 mentioned, I think, previously as a case you had</p> <p>20 given a deposition, and it looks like you 10:36:26</p> <p>21 testified. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. That was an employment case. Correct?</p> <p>24 A. Yes.</p> <p>25 Q. So other than this case, the Jones case and the 10:36:31</p> <p style="text-align: right;">Page 56</p>
<p>1 Q. Oh, that's okay.</p> <p>2 A. Oh.</p> <p>3 Q. It's not a civil case -- not a civil case?</p> <p>4 A. Okay. No.</p> <p>5 Q. Okay. That's fine. That's fine. If it needs to 10:34:12</p> <p>6 be updated, that's fine.</p> <p>7 A. Oh, okay.</p> <p>8 Q. But for our purposes -- so I count, I think,</p> <p>9 maybe -- maybe three civil cases where you have</p> <p>10 authored -- either authored a report or testified. 10:34:30</p> <p>11 Is that correct? The McCrae versus City of Salem I</p> <p>12 think is the first one I see unless I'm missing</p> <p>13 something on the first page.</p> <p>14 A. Let's see. I did testify in McCrae. I testified</p> <p>15 on Gargiulo. 10:34:56</p> <p>16 Q. Okay. Sorry. I'll just take these one at a time</p> <p>17 and maybe -- I don't need to spend much time on</p> <p>18 this.</p> <p>19 A. Oh, sure.</p> <p>20 Q. So the McCrae case was a civil case. Were you 10:35:03</p> <p>21 retained by the plaintiff or defense?</p> <p>22 A. By the plaintiff.</p> <p>23 Q. Do you remember just generally the nature of that</p> <p>24 case?</p> <p>25 A. Yes. Ms. McCrae was injured by a plastic or some 10:35:14</p> <p style="text-align: right;">Page 55</p>	<p>1 Gargiulo case, have you provided either an expert</p> <p>2 report or testified in any other civil employment</p> <p>3 case?</p> <p>4 A. Well, I don't always testify because very often the</p> <p>5 people, person settle out of court. 10:36:51</p> <p>6 Q. Sure. And I was just asking a report or authored a</p> <p>7 report or testified.</p> <p>8 A. The 219 case against the Veterans' Administration</p> <p>9 is another employment case.</p> <p>10 Q. Oh, thank you. You had mentioned that earlier. 10:37:13</p> <p>11 Who did you -- who were you retained by in that</p> <p>12 case?</p> <p>13 A. By the plaintiff.</p> <p>14 Q. Okay.</p> <p>15 A. And I guess it's not on here. Must have been 10:37:22</p> <p>16 earlier, 218 or so.</p> <p>17 Q. Okay. Have you ever been retained in any case that</p> <p>18 involved a physician?</p> <p>19 A. Well, the Veterans', both Veterans' Administration</p> <p>20 cases were physicians. 10:37:45</p> <p>21 Q. Was there one or more Veterans' case?</p> <p>22 A. Well, there is another one, but it was earlier</p> <p>23 than 218.</p> <p>24 Q. Oh, I see. Okay.</p> <p>25 A. I believe it was in 218. It was a year earlier. 10:37:54</p> <p style="text-align: right;">Page 57</p>

15 (Pages 54 - 57)

<p>1 Q. 2018?</p> <p>2 A. Yeah, let me see. Yeah, I don't see it on here.</p> <p>3 Q. That's fine.</p> <p>4 A. It might have been 218.</p> <p>5 Q. Sorry. I don't want to be cross talking. 10:38:06</p> <p>6 So let me ask you about the case that is on</p> <p>7 here, the 2019 -- it looks like the Jewell -- well,</p> <p>8 it's Veterans' Administration case, and it says</p> <p>9 EEOC. You said you were retained by the plaintiff.</p> <p>10 Was the EEOC the plaintiff in this case? Were they 10:38:23</p> <p>11 stepping in the shoes of the plaintiff is probably</p> <p>12 a better way to say that?</p> <p>13 A. Well, I was -- I was hired by the plaintiff so --</p> <p>14 and it's against the Veterans' Administration.</p> <p>15 Q. Oh, I see. Okay. And you may be just -- I think 10:38:41</p> <p>16 I'm making a wrong assumption about the reference</p> <p>17 to the EEOC.</p> <p>18 A. Ms. Jewell did not want to put the name of the</p> <p>19 party on there.</p> <p>20 Q. Okay. So let me just focus you on this case 10:38:54</p> <p>21 involved -- you rendered an expert opinion in</p> <p>22 this -- doesn't look like you rendered a report.</p> <p>23 You just testified --</p> <p>24 A. Just testified.</p> <p>25 Q. -- in the state court case. Okay. 10:39:07</p> <p style="text-align: right;">Page 58</p>	<p>1 lost a contract or --</p> <p>2 Q. Okay.</p> <p>3 A. -- if he quit. I just don't remember.</p> <p>4 Q. Fair enough. And sorry to interrupt, but I just</p> <p>5 want to keep things moving. 10:41:17</p> <p>6 A. Sure.</p> <p>7 Q. Let me ask you this question to the extent you</p> <p>8 remember: Do you remember evaluating any earnings</p> <p>9 loss or doing any similar type of calculation you</p> <p>10 did in this case? 10:41:26</p> <p>11 A. We -- I know we talked about it at trial, and it's</p> <p>12 more -- the Veterans' Administration is more</p> <p>13 administrative.</p> <p>14 Q. Sure.</p> <p>15 A. Judge through the Veterans' Administration, and so 10:41:37</p> <p>16 it was much like this, you know.</p> <p>17 Q. Pretty informal?</p> <p>18 A. Pretty informal.</p> <p>19 Q. No jury?</p> <p>20 A. No. 10:41:50</p> <p>21 Q. So my question was did you perform any sort of</p> <p>22 earnings-loss calculations to prepare to testify at</p> <p>23 that administrative hearing?</p> <p>24 A. You know, I can't remember. It wasn't as formal as</p> <p>25 this one. 10:42:04</p> <p style="text-align: right;">Page 60</p>
<p>1 A. Yes.</p> <p>2 Q. And the plaintiff was a physician?</p> <p>3 A. Yes. Plastic surgeon.</p> <p>4 Q. And what did you opine on in that case, just very</p> <p>5 generally? Was it the same sort of 10:39:23</p> <p>6 earnings-capacity analysis?</p> <p>7 A. It was earning capacity analysis and how it</p> <p>8 affected his employability in the future and</p> <p>9 placeability.</p> <p>10 Q. And it looks like you didn't author a report, but 10:39:41</p> <p>11 do you have a memory? I know it's been a couple</p> <p>12 years ago. Do you have a memory of the analysis</p> <p>13 that you performed to prepare to testify at trial?</p> <p>14 A. Well, it was very similar to what I did with</p> <p>15 Dr. Bala, so I looked at -- I interviewed, looked 10:40:00</p> <p>16 at materials, case materials, and then discussed --</p> <p>17 it was primarily discussing his job and the -- and</p> <p>18 I'm just going to use the word "harm" or</p> <p>19 "discrimination" he felt, synonymous there, in</p> <p>20 terms of obtaining or keeping his job through the 10:40:31</p> <p>21 Veterans' Administration -- and I believe he was a</p> <p>22 director of plastic surgery. He was like the -- he</p> <p>23 was fairly high up -- and how difficult it was once</p> <p>24 he left there to obtain another job. I think -- I</p> <p>25 don't remember if he was terminated or not or if he 10:41:05</p> <p style="text-align: right;">Page 59</p>	<p>1 Q. Okay. Let me ask you this question, Ms. Broten.</p> <p>2 Maybe this will get at it. Other than this case</p> <p>3 with Dr. Bala, have you ever had occasion -- and</p> <p>4 then it likely would only be in this -- the</p> <p>5 Veterans' cases -- to consult physician 10:42:17</p> <p>6 compensation benchmark surveys like the AAMC or</p> <p>7 others? Have you ever had occasion to consult</p> <p>8 those, or is this case the first time you've had</p> <p>9 occasion to do that?</p> <p>10 A. This would be -- yeah, I've consulted them because 10:42:32</p> <p>11 I've done them in these two cases, so I have</p> <p>12 researched that material. I'm trying to think if I</p> <p>13 have done it in a -- in a divorce case. I can't</p> <p>14 remember if I have -- I think I may have done it in</p> <p>15 a divorce case. I just don't know. 10:42:56</p> <p>16 Q. Okay.</p> <p>17 A. And it would be more on earning potential rather</p> <p>18 than loss of earning capacity.</p> <p>19 Q. And that's fair. And so is this -- is this the</p> <p>20 first time -- this case the first time you've had 10:43:09</p> <p>21 an occasion to prepare an analysis and render an</p> <p>22 opinion about a loss of earnings?</p> <p>23 A. For a physician.</p> <p>24 Q. For a physician. Thank you.</p> <p>25 A. Yeah. Yes. 10:43:21</p> <p style="text-align: right;">Page 61</p>

16 (Pages 58 - 61)

<p>1 Q. Okay. I think it's the last page of your report,</p> <p>2 Ms. Broten, that's your retainer agreement. If you</p> <p>3 could just flip to that for me. Is this your</p> <p>4 standard retainer agreement?</p> <p>5 A. Yeah, it's the standard. 10:43:51</p> <p>6 Q. Okay. And do you have an estimate of fees you've</p> <p>7 incurred to date on this matter?</p> <p>8 A. I really haven't, but we're working on it.</p> <p>9 Q. Okay. You haven't invoiced yet?</p> <p>10 A. I haven't yet, but I know you asked for it. The 10:44:02</p> <p>11 bill is coming.</p> <p>12 Q. Very good. Okay.</p> <p>13 A. My -- yeah. My secretary said, Lisa, I'm working</p> <p>14 on it. I really am, because I wanted it for today,</p> <p>15 but she couldn't get it done. 10:44:14</p> <p>16 Q. That's okay. Has any of the work you've done to</p> <p>17 date been on -- it looks like your retainer</p> <p>18 agreement differentiates a different hourly rate</p> <p>19 and a higher hourly rate if there is a rush status?</p> <p>20 A. Right. 10:44:31</p> <p>21 Q. Has any of the work you've done on this case been a</p> <p>22 rush status type of --</p> <p>23 A. This was not a rush status, right.</p> <p>24 Q. If you could turn to your CV, which is also part of</p> <p>25 your report. A few questions for you about that. 10:44:45</p> <p style="text-align: right;">Page 62</p>	<p>1 this case?</p> <p>2 A. I looked at the "Dictionary of Occupational</p> <p>3 Titles." EP is not a job listed in there because</p> <p>4 it's so old but still used today, especially by</p> <p>5 Social Security. I looked at O*NET. I looked 10:46:51</p> <p>6 at -- oh, I went into LifeStep, seeing if that</p> <p>7 would come up with additional information on</p> <p>8 occupation. I went to the Oregon Employment</p> <p>9 Department. I went to the Department of Labor,</p> <p>10 U.S. labor stats, and I also went on SkillTRAN. 10:47:21</p> <p>11 Q. It sounds like you were looking for labor data</p> <p>12 on -- specifically on EPs, to begin with. Correct?</p> <p>13 A. Right. And then it morphed to a couple other</p> <p>14 occupations.</p> <p>15 Q. What did it morph to? 10:47:50</p> <p>16 A. One of them was surgeons, all other, standard</p> <p>17 occupational code, SOC, and then it also kind of</p> <p>18 centered on cardiologist.</p> <p>19 Q. The last page of your CV, your professional</p> <p>20 activities, is that current and exhaustive, nothing 10:48:22</p> <p>21 missing from that?</p> <p>22 A. Let's see. That looks -- that looks about right</p> <p>23 right now.</p> <p>24 Q. Okay. I don't see, unless I have overlooked it,</p> <p>25 that you've authored any publication, any 10:48:54</p> <p style="text-align: right;">Page 64</p>
<p>1 Do you know when you last revised this, Ms. Broten?</p> <p>2 A. Oh, maybe three months ago, six -- six -- six</p> <p>3 months ago, three. I'm not sure.</p> <p>4 Q. Okay. And I think I now know from your earlier</p> <p>5 testimony what the acronyms after your name means, 10:45:05</p> <p>6 so we're good there. Your professional</p> <p>7 certifications, are those all current and complete?</p> <p>8 A. Yes, they're all current. I am currently</p> <p>9 submitting, yes, documents to keep them.</p> <p>10 Q. Okay. If you could turn to page 3 of your CV, 10:45:24</p> <p>11 please. I will direct you to the "PROFESSIONAL</p> <p>12 SKILLS" section. Is this meant to be exhaustive of</p> <p>13 all of your professional skills that you've the</p> <p>14 thorough -- I think that you define as having a</p> <p>15 "thorough working knowledge of"? 10:46:11</p> <p>16 A. Oh, you mean of the testing and some of the -- some</p> <p>17 of the resource manuals and --</p> <p>18 Q. Yes. Whatever --</p> <p>19 A. -- so forth.</p> <p>20 Q. -- is listed on -- 10:46:24</p> <p>21 A. Yeah.</p> <p>22 Q. -- your professional skills?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you rely on any of these vocational</p> <p>25 reference materials in forming your opinions in 10:46:35</p> <p style="text-align: right;">Page 63</p>	<p>1 publications?</p> <p>2 A. I have not.</p> <p>3 Q. Have you ever authored any publications in your</p> <p>4 field of expertise?</p> <p>5 A. No. I haven't had time. I'm very, very busy. 10:49:04</p> <p>6 Plus I have children.</p> <p>7 Q. Slightly different question from what I asked you</p> <p>8 earlier. I asked you for an estimated breakdown</p> <p>9 between your work, I should say, as a forensic in,</p> <p>10 for example, civil cases and then Social Security 10:49:41</p> <p>11 cases versus your voc rehab work, and I think you</p> <p>12 said it could be about, I forget, 40 to 50 percent,</p> <p>13 maybe, 30 to 40, whatever it was.</p> <p>14 A. Yeah.</p> <p>15 Q. My question is does that directly correlate to your 10:49:54</p> <p>16 breakdown of income, or do you derive more income</p> <p>17 from the forensic versus the non-forensic work?</p> <p>18 A. That's a really good question. I wish I knew. I</p> <p>19 don't keep track, and it's partly because I'm just</p> <p>20 so busy that I don't keep track. I just do my job. 10:50:07</p> <p>21 Q. Okay. You mentioned earlier you currently have one</p> <p>22 employee. Is that Pam Donaldson?</p> <p>23 A. No. Actually, she left. It is now Jennifer Green.</p> <p>24 Q. Jennifer?</p> <p>25 A. Green. 10:50:23</p> <p style="text-align: right;">Page 65</p>

17 (Pages 62 - 65)

<p>1 Q. Green?</p> <p>2 A. Yes.</p> <p>3 Q. What's Ms. Green's role with your organization?</p> <p>4 A. She is an office assistant, and Pam I had worked</p> <p>5 with for many, many years and actually retrained 10:50:33</p> <p>6 her from being a paramedic to an administrative</p> <p>7 person, but she left. She retired and -- at 72,</p> <p>8 and then Jennifer came on, and now I'm training</p> <p>9 Jennifer to do my administrative work, typing bills</p> <p>10 and that kind of thing. 10:51:06</p> <p>11 Q. Did Jennifer have any role in your preparation of</p> <p>12 this -- of your report or rebuttal report in this</p> <p>13 case?</p> <p>14 A. You know, she -- her name isn't up here. It should</p> <p>15 be, so -- so she probably didn't. It was probably 10:51:19</p> <p>16 me.</p> <p>17 Q. Well --</p> <p>18 A. It is an old form.</p> <p>19 Q. Okay. So, Ms. Broten, I want to -- my question is</p> <p>20 did anyone other than you author this report that 10:51:29</p> <p>21 we see in Exhibit 1?</p> <p>22 A. Oh, no. Just me.</p> <p>23 Q. Did anyone other than you author your rebuttal</p> <p>24 report?</p> <p>25 A. No, no. Just me. 10:51:38</p> <p style="text-align: right;">Page 66</p>	<p>1 certain portions of it, so as we're going through</p> <p>2 things today, if you see anything, even if I don't</p> <p>3 ask you about it, that you identify as now</p> <p>4 inaccurate or where your opinion has changed, would</p> <p>5 you please let me know. 10:53:36</p> <p>6 A. Yes. Thank you.</p> <p>7 Q. We talked -- you referenced a couple times today</p> <p>8 the files or records in this case. If you turn to</p> <p>9 page 3 of your report, you have a section that</p> <p>10 states review of records and other documents. Do 10:53:54</p> <p>11 you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that what you've been referring to when you've</p> <p>14 generally referenced the "file" or the "records"?</p> <p>15 A. Yes. 10:54:03</p> <p>16 Q. Other than what you list here on pages 3 and 4 of</p> <p>17 your report, under review of records and other</p> <p>18 documents, did you rely on anything else in</p> <p>19 performing your analysis or reaching your expert</p> <p>20 opinions? 10:54:18</p> <p>21 A. I don't believe so. I did some extra reading but</p> <p>22 didn't utilize it. I believe I didn't utilize any</p> <p>23 of it in the report.</p> <p>24 Q. Okay. So, to the best of your knowledge,</p> <p>25 everything you relied upon in performing your 10:54:33</p> <p style="text-align: right;">Page 68</p>
<p>1 Q. As you sit here today, do you have a best estimate</p> <p>2 of how many reports you've prepared in your role as</p> <p>3 a vocational expert?</p> <p>4 A. I started doing more vocational expert work in, I</p> <p>5 don't know, 212, 215, and then kind of 10:52:08</p> <p>6 lessened -- 215 started lessening the workers' comp</p> <p>7 side and gaining more expert work. I don't know.</p> <p>8 I want to say a thousand. Feels like a thousand.</p> <p>9 Q. Okay. And even though you were not certified</p> <p>10 until 2018, sounds like you started doing some 10:52:35</p> <p>11 voc -- vocational forensic work prior to that?</p> <p>12 A. I did a lot of vocational forensic work. I can --</p> <p>13 I actually have a record of all the reports, most</p> <p>14 of the reports, on the forensic side.</p> <p>15 Q. Have you had an opportunity to review your report 10:52:52</p> <p>16 that's in Exhibit 1 or your -- obviously you just</p> <p>17 did your rebuttal report, but have you had an</p> <p>18 opportunity to review your report recently? Are</p> <p>19 you familiar with it?</p> <p>20 A. I started reviewing it in the last week, within the 10:53:06</p> <p>21 last week.</p> <p>22 Q. Okay. Is there anything inaccurate in your report?</p> <p>23 A. Not -- not that I -- not that I can pinpoint at</p> <p>24 this moment.</p> <p>25 Q. Okay. We're going to talk in some detail about 10:53:24</p> <p style="text-align: right;">Page 67</p>	<p>1 analysis and reaching your expert opinions is</p> <p>2 identified under review of records and other</p> <p>3 documents on pages 3 and 4 of your report?</p> <p>4 A. I believe so.</p> <p>5 Q. Okay. Turn to page 2, which you're welcome to 10:54:50</p> <p>6 reference or not. I want to ask you a little bit</p> <p>7 about your methodology that you employ as a</p> <p>8 vocational expert, Ms. Broten. Just generally</p> <p>9 speaking, what is a vocational assessment and how</p> <p>10 do you perform one? 10:55:15</p> <p>11 A. It's a -- basically it's a method of collecting</p> <p>12 data -- and I think I probably describe it here a</p> <p>13 little bit -- evaluating the issues, performing a</p> <p>14 qualitative informational interview, identifying</p> <p>15 any problems and then looking at resource documents 10:55:41</p> <p>16 to come up with -- in this case, it would be a loss</p> <p>17 of earning capacity or earning capacity and then</p> <p>18 looking at all the barriers and discussing all</p> <p>19 those in the assessment itself. It could include</p> <p>20 many different aspects depending on the case, so, 10:56:12</p> <p>21 you know, disability, personal injury. It just</p> <p>22 depends on what the harm was.</p> <p>23 Q. Okay. And you mention, I see, the VRAM. Am I</p> <p>24 pronouncing that correctly?</p> <p>25 A. Right. 10:56:31</p> <p style="text-align: right;">Page 69</p>

18 (Pages 66 - 69)

<p>1 Q. It's capital V-R-A-M.</p> <p>2 A. VRAM.</p> <p>3 Q. VRAM.</p> <p>4 A. Yeah.</p> <p>5 (Exhibit 2 marked) 10:56:55</p> <p>6 MR. BRISCHETTO: Thank you.</p> <p>7 THE REPORTER: Exhibit 2.</p> <p>8 MS. BAUMGART: Matthew, do you want one?</p> <p>9 MR. ELLIS: Yes, please.</p> <p>10 (Exhibit 3 marked) 10:57:22</p> <p>11 Q. BY MS. BAUMGART: Ms. Broten, the court reporter</p> <p>12 has handed you what we've marked as Exhibit 2,</p> <p>13 which is entitled "The Vocational and</p> <p>14 Rehabilitation Assessment Model (VRAM):</p> <p>15 Introduction of an Empirically Derived Model of 10:57:40</p> <p>16 Forensic Vocational and Rehabilitation Assessment."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Are you familiar with this document and this model?</p> <p>20 A. I am. 10:57:51</p> <p>21 Q. Is this to what you're referring in your report in</p> <p>22 Footnote 4?</p> <p>23 A. Yes.</p> <p>24 Q. Yes? Okay. So let's look at that. I think you</p> <p>25 reference a certain page, 91. So just a couple 10:58:09</p> <p style="text-align: right;">Page 70</p>	<p>1 A. Yes.</p> <p>2 Q. You conducted a labor market research and inquiry?</p> <p>3 A. Yes.</p> <p>4 Q. And you undertook a rehabilitation analysis and</p> <p>5 opinion formulation? 10:59:38</p> <p>6 A. Yes.</p> <p>7 Q. And I think that final module -- let me see if I</p> <p>8 can find it for you. So if you look on page 99 for</p> <p>9 me, please. Again, you're probably more familiar</p> <p>10 with this than I am, so bear with me. 11:00:09</p> <p>11 A. I haven't looked at it for a while.</p> <p>12 Q. Oh, you haven't? Okay. When is the last time you</p> <p>13 looked at it?</p> <p>14 A. Oh, I think I looked at it briefly yesterday. I</p> <p>15 didn't read it, though. 11:00:21</p> <p>16 Q. Did you look at it in the context of doing your</p> <p>17 analysis for this case?</p> <p>18 A. I usually don't have to because it's standard.</p> <p>19 Q. Sure. Okay.</p> <p>20 A. The process. 11:00:30</p> <p>21 Q. Pretty standard for you?</p> <p>22 A. Right.</p> <p>23 Q. All right. Page 99 on the left, the second</p> <p>24 heading, "Rehabilitation Analysis and Opinion</p> <p>25 Formulation." It lists out several core analyses 11:00:42</p> <p style="text-align: right;">Page 72</p>
<p>1 questions about -- about this. There are distinct</p> <p>2 modules that are required under VRAM. Is that</p> <p>3 accurate?</p> <p>4 A. Yes.</p> <p>5 Q. And there -- I think, if I read this correctly, 10:58:28</p> <p>6 there are three distinct modules. Is that right?</p> <p>7 A. Where are you -- where are you reading?</p> <p>8 Q. Well, just generally. I think that, if we're</p> <p>9 looking at -- for the records review, there --</p> <p>10 there is a records review, rehabilitation interview 10:58:46</p> <p>11 and a labor market research. Are those the</p> <p>12 three -- and I may be summarizing -- the three</p> <p>13 modules?</p> <p>14 A. I would believe so, but yes.</p> <p>15 Q. Okay. 10:59:00</p> <p>16 A. I do -- I do all those things.</p> <p>17 Q. Okay. And in this case, is it your testimony that</p> <p>18 you followed that methodology, that you performed a</p> <p>19 records review? Correct?</p> <p>20 A. Yes. 10:59:18</p> <p>21 Q. And you conducted what's described here as a</p> <p>22 rehabilitation interview?</p> <p>23 A. Yes.</p> <p>24 Q. Is that the same thing as your qualitative</p> <p>25 interview with Dr. Bala? 10:59:28</p> <p style="text-align: right;">Page 71</p>	<p>1 within it. It looks like there is a "Psychometric</p> <p>2 Measurement," "Future Medical Care Needs" on down</p> <p>3 through page 1 -- it goes on to like page 100 and</p> <p>4 ends in the -- finally the "Forensic Opinion</p> <p>5 Formulation." Is this all familiar to you? 11:01:07</p> <p>6 A. Um-hum. Yes, it is.</p> <p>7 Q. Okay.</p> <p>8 A. Oh, I wrote on it. I'm sorry.</p> <p>9 Q. That's okay.</p> <p>10 A. I'm checking marks. 11:01:16</p> <p>11 Q. That's okay. So according to this article, which</p> <p>12 is presenting the VRAM method, on page 101 -- so if</p> <p>13 you could turn there with me, please. And I'm</p> <p>14 looking under the "Forensic Opinion Formulation."</p> <p>15 It states that -- and then down at the bottom of 11:01:39</p> <p>16 that paragraph -- "Each decision or conclusion</p> <p>17 drawn within the rehabilitation analysis and</p> <p>18 opinion formulation module should be summarized."</p> <p>19 Do you see that?</p> <p>20 A. Um-hum, yes. 11:01:57</p> <p>21 Q. Okay. And you agree with this methodology?</p> <p>22 A. Well, I use this methodology. I -- I use parts of</p> <p>23 this methodology, and I include other parts of</p> <p>24 different methodologies, but yes.</p> <p>25 Q. And so for this specific part of this methodology 11:02:12</p> <p style="text-align: right;">Page 73</p>

19 (Pages 70 - 73)

<p>1 in relation to the work that you did in Dr. Bala's</p> <p>2 case, do you see here that this -- this step that</p> <p>3 we just talked about that I just read in the VRAM</p> <p>4 model "allows opinions and conclusions to be</p> <p>5 clearly stated with which minimizes error in 11:02:33</p> <p>6 interpretation." Do you --</p> <p>7 A. I do see that.</p> <p>8 Q. -- see that, and do you agree that that's a good</p> <p>9 approach and practice to state your opinion as</p> <p>10 clearly as possible? 11:02:46</p> <p>11 A. Oh, yes.</p> <p>12 Q. Yes, you agree with it?</p> <p>13 A. Um-hum (affirmative response).</p> <p>14 Q. Yes?</p> <p>15 A. Yes. 11:02:49</p> <p>16 Q. Do you agree that minimizing error in</p> <p>17 interpretation is important to your expert</p> <p>18 vocational assessment?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. But then when I look at your -- back to your 11:02:56</p> <p>21 report -- and just so you know, you're welcome to</p> <p>22 take notes, Ms. Broten, but we're going to mark</p> <p>23 them as an exhibit to your deposition so just --</p> <p>24 A. Oh, okay. Sure.</p> <p>25 Q. That's fine. You're welcome to do that, but just 11:03:15</p> <p style="text-align: right;">Page 74</p>	<p>1 methodologies and standards of practice when you</p> <p>2 conduct your vocational assessment and earning</p> <p>3 capacity analysis. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you say that you generally follow the VRAM, 11:04:27</p> <p>6 which we just looked at, right?</p> <p>7 A. Right.</p> <p>8 Q. And then you go on to say about halfway through</p> <p>9 that paragraph that this consultant, who I assume</p> <p>10 means yourself. Yes? 11:04:42</p> <p>11 A. Yes.</p> <p>12 Q. "This consultant's approach applies to clinical</p> <p>13 judgment, selected steps that have been adapted to</p> <p>14 my analysis and reporting style." You see that?</p> <p>15 A. Yes. 11:04:53</p> <p>16 Q. "The steps to this consultant's methodology</p> <p>17 include," and then you list five steps. Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. So am I correct to understand that you've actually 11:05:01</p> <p>21 created your own methodology and your own five-step</p> <p>22 approach for conducting your vocational assessments</p> <p>23 and earning capacity? Is that right?</p> <p>24 A. Well, I generally follow accepted measures and then</p> <p>25 adjust them to the case I'm working on. 11:05:19</p> <p style="text-align: right;">Page 76</p>
<p>1 know that they'll become part of the record.</p> <p>2 A. Sure.</p> <p>3 Q. Okay. So looking back at your report, page 2,</p> <p>4 "METHODOLOGY," after you talk about general</p> <p>5 methodologies in your area of expertise, including 11:03:31</p> <p>6 the VRAM, you go on to say that "This consultant's</p> <p>7 approach applies to clinical judgment, selected</p> <p>8 steps that have been adapted to my analysis and</p> <p>9 reporting style. The steps to this consultant's</p> <p>10 methodology include," and then you end the 11:03:53</p> <p>11 paragraph by listing five steps. Do you see that?</p> <p>12 A. Where are you?</p> <p>13 Q. Oh, I'm sorry. Page 2 of your report under your</p> <p>14 methodology.</p> <p>15 A. First paragraph? 11:04:02</p> <p>16 Q. "Methodology." Yeah, the first paragraph.</p> <p>17 A. Yes. Okay.</p> <p>18 Q. Okay. I can back up. Sorry.</p> <p>19 A. That's okay.</p> <p>20 Q. I didn't realize you weren't there. Next time, 11:04:10</p> <p>21 just feel free to stop me if you're still trying to</p> <p>22 find the --</p> <p>23 A. No.</p> <p>24 Q. -- place in the document. Okay. So the first part</p> <p>25 of that paragraph you note that you follow accepted 11:04:17</p> <p style="text-align: right;">Page 75</p>	<p>1 Q. Right. So you maybe, you know, have a base in VRAM</p> <p>2 or other methodologies, but you, in fact, you know,</p> <p>3 adjust those and create your own -- in this case, a</p> <p>4 five-step approach for conducting your vocational</p> <p>5 assessment and earning capacity analysis with 11:05:36</p> <p>6 respect to Dr. Bala. Correct?</p> <p>7 MR. BRISCHETTO: Objection. Misstates the</p> <p>8 testimony.</p> <p>9 Go ahead.</p> <p>10 Q. BY MS. BAUMGART: Well, I'll rephrase the question. 11:05:46</p> <p>11 Is it correct that in this case, Ms. Broten, as</p> <p>12 you state here in your report that I just read,</p> <p>13 that you created your own five-step methodology</p> <p>14 that we see on page 2 of Exhibit 1 to evaluate</p> <p>15 Dr. Bala's -- to conduct your vocational assessment 11:06:04</p> <p>16 and earning capacity analysis of Dr. Bala?</p> <p>17 Correct?</p> <p>18 MR. BRISCHETTO: Objection. Asked and</p> <p>19 answered.</p> <p>20 Go ahead. 11:06:16</p> <p>21 Q. BY MS. BAUMGART: You may go ahead.</p> <p>22 A. Well, I use this method generally in most of my</p> <p>23 assessments. It's fairly general.</p> <p>24 Q. And when you say "this method," you're talking</p> <p>25 about your five-step method that we see on page 2 11:06:30</p> <p style="text-align: right;">Page 77</p>

20 (Pages 74 - 77)

<p>1 of your report?</p> <p>2 MR. BRISCHETTO: Objection. Improper</p> <p>3 foundation. Misstates the testimony.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: I don't know if I'd call it "my 11:06:40</p> <p>6 method," but it is an adjusted method, or I</p> <p>7 generally follow the methods that are within VRAM</p> <p>8 and/or others that I've reviewed, and, yes, that's</p> <p>9 in part what I do.</p> <p>10 Q. BY MS. BAUMGART: Okay. And I wanted to understand 11:07:04</p> <p>11 that a little bit better. So you don't -- I think,</p> <p>12 if I'm understanding you correctly and reading what</p> <p>13 I think is pretty clear in your report, that you</p> <p>14 don't just ascribe to the VRAM or other model. Is</p> <p>15 that right? 11:07:20</p> <p>16 A. Right.</p> <p>17 Q. Okay. What you do is maybe take some steps from</p> <p>18 the VRAM or other models and in this case have</p> <p>19 created your five-step consultant's methodology.</p> <p>20 Is that a fair -- 11:07:35</p> <p>21 MR. BRISCHETTO: Objection. Mis --</p> <p>22 MS. BAUMGART: Go ahead and let me finish my</p> <p>23 question, Steve. Thank you.</p> <p>24 MR. BRISCHETTO: I will. Yeah, I will.</p> <p>25 MS. BAUMGART: There is no -- 11:07:40</p> <p style="text-align: right;">Page 78</p>	<p>1 MR. BRISCHETTO: Objection. Misstates the</p> <p>2 testimony.</p> <p>3 Go ahead.</p> <p>4 Q. BY MS. BAUMGART: Go ahead.</p> <p>5 A. Those five steps are certainly a part of any 11:08:43</p> <p>6 assessment that I write or author or form an</p> <p>7 opinion to.</p> <p>8 Q. And that was the case here as well. Correct?</p> <p>9 A. I believe so.</p> <p>10 Q. It says that's what you did, so did you do it, or 11:09:01</p> <p>11 did you not do it?</p> <p>12 A. I'm going to say at this -- this moment yes, but,</p> <p>13 you know, I'm looking at it.</p> <p>14 Q. Why don't you go ahead and take a moment to read to</p> <p>15 yourself the five steps -- 11:09:17</p> <p>16 A. Thank you.</p> <p>17 Q. -- that you stated you use to evaluate the</p> <p>18 vocational assessment and earning capacity in this</p> <p>19 case.</p> <p>20 A. I didn't use medical source documents because that 11:09:59</p> <p>21 wasn't part of this case. And, yes, I generally</p> <p>22 use those methods when writing a report or</p> <p>23 evaluating loss of earning.</p> <p>24 Q. And when you say you generally use those methods,</p> <p>25 you're referring to the specific five steps? 11:10:26</p> <p style="text-align: right;">Page 80</p>
<p>1 MR. BRISCHETTO: Go ahead.</p> <p>2 MS. BAUMGART: -- indication of misstate here.</p> <p>3 I'm just --</p> <p>4 MR. BRISCHETTO: Go ahead.</p> <p>5 MS. BAUMGART: The document speaks for itself, 11:07:43</p> <p>6 number one.</p> <p>7 MR. BRISCHETTO: It does. I agree.</p> <p>8 MS. BAUMGART: So -- okay. Let me finish my</p> <p>9 question, which I was interrupted.</p> <p>10 MR. BRISCHETTO: I apologize. 11:07:51</p> <p>11 Q. BY MS. BAUMGART: Okay. Let me see if we can do</p> <p>12 this one more time.</p> <p>13 I just want to understand how you do your work,</p> <p>14 Ms. Broten, and this is really important, right? I</p> <p>15 mean, this part of how you -- what methodology you 11:08:00</p> <p>16 employ and whether or not you are following VRAM or</p> <p>17 other -- I need to understand what methodology you</p> <p>18 use, and I think it's pretty clear here, so I'm</p> <p>19 just trying to confirm that. Okay?</p> <p>20 A. Yes. 11:08:17</p> <p>21 Q. Yes? Okay. So is it correct that you, for</p> <p>22 purposes of evaluating Dr. Bala's vocational</p> <p>23 assessment and earning capacity analysis, you</p> <p>24 utilized the five steps to your consultant's</p> <p>25 methodology? 11:08:35</p> <p style="text-align: right;">Page 79</p>	<p>1 A. Yes.</p> <p>2 Q. Yes? In this case, did you use those five steps?</p> <p>3 A. Mostly, yes.</p> <p>4 Q. Okay. Let's talk about them. The first step you</p> <p>5 list is "Collecting data and facts specific to the 11:10:42</p> <p>6 person(s) being evaluated and matters at issue."</p> <p>7 Correct?</p> <p>8 A. Yes.</p> <p>9 Q. What does that mean?</p> <p>10 A. That means doing the interview, reviewing file 11:10:51</p> <p>11 documents.</p> <p>12 Q. Is that derived from the VRAM? Is it RAPEL? Is</p> <p>13 that how you say that?</p> <p>14 A. RAPEL.</p> <p>15 Q. R-A-P-E-L. Or labor market model, or is this 11:11:11</p> <p>16 something that you've defined --</p> <p>17 A. Right.</p> <p>18 Q. -- separately based on your -- to align with your</p> <p>19 approach and reporting style?</p> <p>20 A. It's -- it's necessary, and it's something I do in 11:11:26</p> <p>21 every single case I work --</p> <p>22 Q. Okay.</p> <p>23 A. -- I work with.</p> <p>24 Q. And that's great. I just wanted to know: Is this,</p> <p>25 what we just read is the first step in your 11:11:40</p> <p style="text-align: right;">Page 81</p>

21 (Pages 78 - 81)

<p>1 methodology, is it verbatim, lifted, aligned with</p> <p>2 something like the VRAM or RAPEL, or is it</p> <p>3 something that you have created to align with your</p> <p>4 consultant's approach?</p> <p>5 MR. BRISCHETTO: Objection. Assumes a fact not 11:11:58</p> <p>6 in evidence.</p> <p>7 Go ahead.</p> <p>8 MS. BAUMGART: It's an open-ended question.</p> <p>9 THE WITNESS: Almost every vocational</p> <p>10 assessment will include that piece. 11:12:07</p> <p>11 Q. BY MS. BAUMGART: And I'm asking do you know if</p> <p>12 this piece, the collecting data and facts specific</p> <p>13 to the persons being evaluated in matters at issue,</p> <p>14 is that a standard methodology from any of these</p> <p>15 specific -- 11:12:21</p> <p>16 A. Yes.</p> <p>17 Q. -- models?</p> <p>18 A. Yes.</p> <p>19 Q. Which one?</p> <p>20 A. Well, every -- every model contains an interview. 11:12:28</p> <p>21 Every model has file documents. Not every model</p> <p>22 but most models have file document review.</p> <p>23 Q. Okay. Let's look at Number 2, "Synthesizing</p> <p>24 information and data provided and obtained with an</p> <p>25 emphasis on employability." Do you see that? 11:12:49</p> <p style="text-align: right;">Page 82</p>	<p>1 then you list what the five steps are. So I'm just</p> <p>2 trying to understand, you know, sort of what's</p> <p>3 something you've like taken and put together,</p> <p>4 what's something that's outside of these reports,</p> <p>5 so what you just answered is very -- very helpful. 11:14:32</p> <p>6 And so the same with Question 3 -- or, excuse me,</p> <p>7 the third step in your methodology. I'm not going</p> <p>8 to read that into the record, but does this derive</p> <p>9 from -- in whole or in part from one of the other</p> <p>10 empirical models, or is this something you've 11:14:52</p> <p>11 created?</p> <p>12 MR. BRISCHETTO: Objection. Misstates the</p> <p>13 testimony.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: This is derived from the models, 11:14:58</p> <p>16 and it's just -- it's in part just provided to give</p> <p>17 you more information, so --</p> <p>18 Q. BY MS. BAUMGART: What about Number 4?</p> <p>19 A. That's in all the models, or in some of the models,</p> <p>20 I should say. Always identifying the problems, 11:15:23</p> <p>21 what are they, and jobs, how they affect jobs, how</p> <p>22 the evaluatee or the interviewee or the person that</p> <p>23 we're interviewing -- call it "evaluatee" --</p> <p>24 performs.</p> <p>25 Q. And the last one I think we've already talked 11:15:49</p> <p style="text-align: right;">Page 84</p>
<p>1 A. Yes.</p> <p>2 Q. Is this something that derives from a model like</p> <p>3 the VRAM, labor statistics otherwise, or is this</p> <p>4 something you've created to align with your</p> <p>5 consultant's approach and reporting style? 11:13:03</p> <p>6 MR. BRISCHETTO: Objection. Assumes a fact not</p> <p>7 in evidence.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: Every model that vocational</p> <p>10 assessment authors has this step because it's all 11:13:15</p> <p>11 based on employability. So we look at all the</p> <p>12 facts. We look at all the interviews. We look at</p> <p>13 everything to put together information that's</p> <p>14 provided and obtained to look at employability.</p> <p>15 And it's partly in VRAM. It's partly in RAPEL. 11:13:50</p> <p>16 It's a lot to do with labor market access.</p> <p>17 Q. BY MS. BAUMGART: And that's really the latter part</p> <p>18 of that answer what I'm getting at, Ms. Broten.</p> <p>19 I'm just trying to understand because -- and I'm</p> <p>20 not sure of counsel's objection. When you say that 11:14:05</p> <p>21 "This methodology is drawn from the following</p> <p>22 long-standing career and vocational rehabilitation</p> <p>23 models. This consultant's approach applies to</p> <p>24 clinical judgment, selected steps that have been</p> <p>25 adapted to my analysis and reporting style," and 11:14:20</p> <p style="text-align: right;">Page 83</p>	<p>1 about, formulating the vocational expert opinion.</p> <p>2 Certainly we've just looked at in the VRAM.</p> <p>3 Correct?</p> <p>4 A. Yes.</p> <p>5 Q. So is there anything in your five-step methodology 11:15:59</p> <p>6 that does not also appear in either the VRAM or the</p> <p>7 labor statistic model or RAPEL?</p> <p>8 A. Not that I -- not that I know of.</p> <p>9 Q. Then help me understand why your approach and your</p> <p>10 methodology is to select certain steps. Are there 11:16:17</p> <p>11 certain steps that are contained in these models</p> <p>12 that you have chosen not to utilize in evaluating</p> <p>13 Dr. Bala's vocational assessment and earning</p> <p>14 capacity analysis?</p> <p>15 A. Well, in Dr. Bala's case, if I -- if I follow VRAM, 11:16:31</p> <p>16 the way VRAM is expressed in the chart, then the</p> <p>17 records review and rehabilitation interview is all</p> <p>18 a part of that, but it doesn't contain every single</p> <p>19 piece. I mean, I asked about military. I asked</p> <p>20 about education. I asked about behavioral health. 11:16:55</p> <p>21 There was no medical functional capacity, so that's</p> <p>22 being left out essentially. Job acquisition and</p> <p>23 maintenance. So we -- I talk about all those</p> <p>24 things in the interview process, and then I review</p> <p>25 the records. 11:17:15</p> <p style="text-align: right;">Page 85</p>

22 (Pages 82 - 85)

<p>1 So basically I do leave a few things out of the</p> <p>2 model itself, but it's the most complete model that</p> <p>3 I -- I believe someone could understand in</p> <p>4 discussing methodology.</p> <p>5 Q. And just so the record is clear, when you're 11:17:43</p> <p>6 pointing to the model, you're pointing to the</p> <p>7 flow chart that we've marked as Exhibit 3?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And I think is that what you reference, that</p> <p>10 same paragraph in your report, Ms. Broten, where 11:17:55</p> <p>11 you have -- you mentioned you had attached a</p> <p>12 schematic and explanation of the VRAM model. Is</p> <p>13 that Exhibit 3?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And other than maybe leaving out some steps 11:18:04</p> <p>16 as you have just testified to, in your analysis</p> <p>17 with respect to Dr. Bala's vocational assessment</p> <p>18 and earning capacity, did you -- did you leave out</p> <p>19 any other steps?</p> <p>20 A. Well, I didn't do the psychometric measurement, and 11:18:24</p> <p>21 I believe I made a statement in here saying I</p> <p>22 didn't test Dr. Bala. I didn't need to.</p> <p>23 Q. Why didn't you need to test her?</p> <p>24 A. She's -- she's a board-certified physician. She</p> <p>25 has education, skills and training to do the job -- 11:18:42</p> <p style="text-align: right;">Page 86</p>	<p>1 what they might pay. I didn't really use the</p> <p>2 information. I didn't do future medical care</p> <p>3 needs. I did look at transferable skills, but</p> <p>4 essentially she's in the job she is doing, so those</p> <p>5 are pretty standard. But I looked at employability 11:20:22</p> <p>6 and placeability, and those are two fairly large</p> <p>7 components of the assessment, and in that, then you</p> <p>8 form your opinion, and there is no rehabilitation</p> <p>9 and planning services in her case because she</p> <p>10 doesn't have a medical need. And then the wage 11:20:44</p> <p>11 earning capacity and work-life participation.</p> <p>12 Q. Thank you. Have you ever had your five-step</p> <p>13 methodology that you used in this case</p> <p>14 peer-reviewed?</p> <p>15 MR. BRISCHETTO: Objection. Misstates the 11:21:10</p> <p>16 testimony.</p> <p>17 Go ahead.</p> <p>18 Q. BY MS. BAUMGART: There is no reason -- let me</p> <p>19 restate this.</p> <p>20 Have you ever had the steps to this 11:21:17</p> <p>21 consultant's methodology, the 1 through 5 that</p> <p>22 you've just been testifying about, peer-reviewed?</p> <p>23 A. There -- it's a part of the methodology practices,</p> <p>24 and it's something that we talk about actually in</p> <p>25 many of the CEU trainings, continuing education 11:21:37</p> <p style="text-align: right;">Page 88</p>
<p>1 Q. Okay.</p> <p>2 A. -- she was doing, so I had no need to test her.</p> <p>3 I didn't -- I did look at current financial</p> <p>4 information and some past on the W-2s and her</p> <p>5 earning history. I -- you know, we talked about 11:19:04</p> <p>6 that. I didn't talk a lot about household or</p> <p>7 transportation resources or activities of daily</p> <p>8 living. They didn't affect -- she wasn't affected</p> <p>9 by any of those because she has -- she doesn't have</p> <p>10 any medical issues. 11:19:20</p> <p>11 We did talk about avocational activities. I</p> <p>12 think she knows a couple of languages. I know</p> <p>13 where she currently lives, socioeconomic.</p> <p>14 Q. So apart -- sorry, I'm just going to interrupt you</p> <p>15 for a minute. So thank you, and this is helpful. 11:19:38</p> <p>16 So this schematic, which is Exhibit 3, just -- this</p> <p>17 is just a schematic of the actual rehabilitation or</p> <p>18 qualitative interview, right?</p> <p>19 A. No. It's the entire process.</p> <p>20 Q. It's the entire process? 11:19:50</p> <p>21 A. Yeah.</p> <p>22 Q. Okay.</p> <p>23 A. We talk about labor market stat information. We</p> <p>24 talk about sampling, if I did do any, which I don't</p> <p>25 believe I did. I did look up some jobs for EPs and 11:20:00</p> <p style="text-align: right;">Page 87</p>	<p>1 training. So when we're talking about</p> <p>2 methodologies, you know, we bring up these points.</p> <p>3 I'm not the only one that uses this five-step</p> <p>4 process. I'm trying to think of somebody who --</p> <p>5 who I spoke with about it actually, any of my 11:21:55</p> <p>6 colleagues.</p> <p>7 Q. Can you cite to anywhere that --</p> <p>8 A. This?</p> <p>9 Q. -- supports this specific five-step process that</p> <p>10 you have utilized? 11:22:06</p> <p>11 A. I -- I can't.</p> <p>12 Q. Okay. So my question is has this consultant's</p> <p>13 five-step methodology ever been peer-reviewed?</p> <p>14 A. It's been -- it's a part of the vocational</p> <p>15 assessment analyses methodologies, and it's 11:22:25</p> <p>16 utilizing this information in this process, so, no,</p> <p>17 it has not been peer-reviewed from me.</p> <p>18 Q. Can you point to any literature where your</p> <p>19 five-step methodology has been published?</p> <p>20 MR. BRISCHETTO: I'm going to have a continuing 11:23:04</p> <p>21 objection. I don't want to interrupt you</p> <p>22 repeatedly, but the characterization of your --</p> <p>23 MS. BAUMGART: You can just object to form,</p> <p>24 Steve.</p> <p>25 MR. BRISCHETTO: Of your own -- it's 11:23:16</p> <p style="text-align: right;">Page 89</p>

23 (Pages 86 - 89)

<p>1 continuing.</p> <p>2 MS. BAUMGART: I'm reading -- I'm reading</p> <p>3 directly from the report.</p> <p>4 MR. BRISCHETTO: You have on occasion, and</p> <p>5 you've also not, so -- 11:23:21</p> <p>6 MS. BAUMGART: Okay. I want to read directly</p> <p>7 from the report.</p> <p>8 MR. BRISCHETTO: All right.</p> <p>9 Q. BY MS. BAUMGART: So has what you describe in your</p> <p>10 words, Ms. Broten, "this consultant's approach," 11:23:28</p> <p>11 "this consultant's methodology," has that ever been</p> <p>12 published in any sort of peer-reviewed literature?</p> <p>13 A. It may have. I'd have to look for it or consult</p> <p>14 with ABE and find out.</p> <p>15 Q. Is there anything -- 11:23:54</p> <p>16 A. I may not -- oh, I'm sorry.</p> <p>17 Q. Go ahead. Finish.</p> <p>18 A. Maybe not those exact words.</p> <p>19 Q. Is there anything you can point to me, as you sit</p> <p>20 here today, that supports that what you describe as 11:24:04</p> <p>21 "this consultant's approach" and "steps to this</p> <p>22 consultant's methodology" has been scientifically</p> <p>23 tested?</p> <p>24 A. This is derived from several assessment models, and</p> <p>25 I can't point to one. 11:24:36</p> <p style="text-align: right;">Page 90</p>	<p>1 resource docs and my experiences in the market.</p> <p>2 MS. BAUMGART: Okay. We've been going a little</p> <p>3 over an hour. Sorry. We blew past a break.</p> <p>4 Should we go off for five minutes?</p> <p>5 MR. BRISCHETTO: Sure. It's up to you. 11:26:45</p> <p>6 MS. BAUMGART: And then until about -- I mean,</p> <p>7 we're not going to finish before lunch obviously,</p> <p>8 so we can go off the record.</p> <p>9 (RECESS 11:26 to 11:37)</p> <p>10 Q. BY MS. BAUMGART: Ms. Broten, we're back on the 11:37:44</p> <p>11 record after a break. Forgive me, I asked you this</p> <p>12 earlier when you were testifying about your work in</p> <p>13 the Social Security -- or excuse me, the Veterans'</p> <p>14 case that involved a plastic surgeon, right?</p> <p>15 A. Yes. 11:38:02</p> <p>16 Q. And forgive me, did you conduct an earning capacity</p> <p>17 analysis in that case?</p> <p>18 A. I didn't do a report, no.</p> <p>19 Q. Okay. So you did not conduct an earning capacity</p> <p>20 analysis of that physician? 11:38:13</p> <p>21 A. I did an informal earning capacity eval.</p> <p>22 Q. So this case for Dr. Bala is the first time you've</p> <p>23 had occasion to undertake a formal earning capacity</p> <p>24 analysis of a physician. Correct?</p> <p>25 A. Of a physician, yes. 11:38:29</p> <p style="text-align: right;">Page 92</p>
<p>1 Q. So the answer is no, you can't point me to</p> <p>2 anything?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So that aside, you agree with me that it was</p> <p>5 important to follow this consultant's approach and 11:24:53</p> <p>6 the steps to this consultant's methodology when you</p> <p>7 did your work in this case. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And, to the best of your knowledge, you followed</p> <p>10 those steps in performing the vocational and 11:25:07</p> <p>11 earning capacity analysis with respect to Dr. Bala,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. What is an earning capacity analysis?</p> <p>15 A. It's a -- it's an analysis of a person's abilities, 11:25:25</p> <p>16 skills, education, training, work history, age in</p> <p>17 order to determine what their current ability is to</p> <p>18 earn and possibly future, evaluation of past</p> <p>19 financial records, et cetera.</p> <p>20 Q. What methods or principles did you rely on in 11:25:57</p> <p>21 performing that analysis with respect to Dr. Bala?</p> <p>22 A. Well, I used the models that we discussed or that</p> <p>23 are discussed in the plan, and I evaluated all of</p> <p>24 those that I just talked with you about. It's also</p> <p>25 doing labor market analyses and research from 11:26:24</p> <p style="text-align: right;">Page 91</p>	<p>1 Q. And the first time you've had occasion to perform</p> <p>2 an earning capacity analysis of a cardiologist and</p> <p>3 electrophysiologist. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. Would you agree that the physician job market is 11:38:44</p> <p>6 fairly unique?</p> <p>7 A. It is unique in that -- and what do you mean by</p> <p>8 "unique"?</p> <p>9 Q. I just asked if you would agree that the physician</p> <p>10 job market is unique. 11:39:07</p> <p>11 A. It's unique in that -- I don't -- I don't get that</p> <p>12 question. That's -- is it unique?</p> <p>13 Q. How would you describe the physician job market</p> <p>14 compared to other job markets you regularly perform</p> <p>15 earning capacity analyses in? 11:39:22</p> <p>16 A. That's a better question. So the physician job</p> <p>17 market entails similar, as far as I'm concerned,</p> <p>18 standards and job search. There are components to</p> <p>19 it that are more formal, including that of use of</p> <p>20 recruiters in more -- more cases than not, but a 11:39:50</p> <p>21 lot of the job search and job development</p> <p>22 strategies are similar.</p> <p>23 Q. Could you expand on what -- what you mean by that?</p> <p>24 What are the similar job search strategies and</p> <p>25 developments in performing the earnings capacity 11:40:17</p> <p style="text-align: right;">Page 93</p>

24 (Pages 90 - 93)

<p>1 for a physician versus non-physician job market?</p> <p>2 A. So now you're saying in performing an earning</p> <p>3 capacity assessment because your question, I</p> <p>4 believe, was is it unique? So --</p> <p>5 Q. Sure. I can clarify. Thank you. 11:40:37</p> <p>6 A. Yeah, clarify.</p> <p>7 Q. And I should have told you that at the beginning,</p> <p>8 which I neglected to in my housekeeping rules. I</p> <p>9 may very well ask you a question that doesn't make</p> <p>10 sense, and thank you for asking me to rephrase it. 11:40:47</p> <p>11 I'm not --</p> <p>12 A. Thank you.</p> <p>13 Q. -- here to trick you today. I want to be able</p> <p>14 to -- you know, you to understand my questions and</p> <p>15 me to understand your answers. Is that fair? 11:40:55</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. So, again, if I ask something that doesn't</p> <p>18 make sense or you don't understand, please ask me</p> <p>19 to clarify or restate. Okay?</p> <p>20 A. Okay. 11:41:03</p> <p>21 Q. Thank you. All right. So I was asking you about</p> <p>22 whether or not you believe the physician -- how you</p> <p>23 would compare the physician job market to other job</p> <p>24 markets, and you said that there is some similar</p> <p>25 standards for job search strategies but there are 11:41:18</p> <p style="text-align: right;">Page 94</p>	<p>1 individual chooses in their employment market.</p> <p>2 They look toward their specialty in terms of their</p> <p>3 occupation and their specific occupation to</p> <p>4 physicians so -- and where do they want to live?</p> <p>5 Location is very important. So that's another 11:43:26</p> <p>6 aspect of job search.</p> <p>7 Q. Okay. And were you just describing similarities</p> <p>8 between the physician job search and the</p> <p>9 non-physician job search?</p> <p>10 A. The recruiters tend to be the only avenue that's 11:43:38</p> <p>11 different. And they do sign up AIs big now, so</p> <p>12 they sign up with a lot of the Indeeds or the --</p> <p>13 whatever they are, all the different --</p> <p>14 Q. Job boards?</p> <p>15 A. -- AI job boards out there. 11:43:53</p> <p>16 Q. Okay.</p> <p>17 A. PracticeLink, whatever they might be. But in</p> <p>18 general, that's exactly what non-physician</p> <p>19 job searchers do as well. They sign up with a lot</p> <p>20 of different job boards as well. 11:44:07</p> <p>21 Q. Okay. So is it fair, am I hearing your testimony</p> <p>22 that really there aren't any differences, in your</p> <p>23 opinion, between the job search for a physician</p> <p>24 versus a non-physician?</p> <p>25 A. Well, I'm not saying that exactly. You know, it 11:44:21</p> <p style="text-align: right;">Page 96</p>
<p>1 components in the physician job market that are</p> <p>2 more formal, i.e., the use of recruiters. Is that</p> <p>3 a fair summary?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And so what are some of those similar 11:41:27</p> <p>6 standards?</p> <p>7 A. So when you're -- so you're talking about</p> <p>8 job search. When a physician does job search, a</p> <p>9 physician would -- there is various steps, and they</p> <p>10 would contact their network if they're already a 11:41:49</p> <p>11 practicing physician and even those that are</p> <p>12 fellows or students looking to get a job. There is</p> <p>13 developing a resume, solid resume, no spelling</p> <p>14 errors. There is developing cover letters</p> <p>15 sometimes specific to the job that they're 11:42:13</p> <p>16 applying. There is contacting recruiters if that's</p> <p>17 what they choose, and recruiters are -- they come</p> <p>18 in different fashions. There is private. There is</p> <p>19 recruiters in hospitals. There is recruiters for</p> <p>20 groups or human resource staff. Sometimes they're 11:42:35</p> <p>21 not recruiters. They're basically human resource</p> <p>22 staff. A recruiter is part of the human resource</p> <p>23 team, from my experience. And sometimes they sign</p> <p>24 contracts with recruiters; sometimes they don't.</p> <p>25 Just depends on -- on what they -- what that 11:42:59</p> <p style="text-align: right;">Page 95</p>	<p>1 can be more challenging just depending on the job</p> <p>2 itself that the physician is applying for, so there</p> <p>3 are differences for a cashier versus a physician.</p> <p>4 So generally a lot of the principles are the same,</p> <p>5 but -- but there are some differences. So, no, I'm 11:44:44</p> <p>6 not going to say that it's the same.</p> <p>7 Q. Can you identify any other differences that you've</p> <p>8 come across in your experience?</p> <p>9 A. I would have to think about it.</p> <p>10 Q. Okay. If you think about it and come up with any, 11:44:55</p> <p>11 just holler.</p> <p>12 Ms. Broten, have you had any training as it</p> <p>13 relates specifically to the physician job market?</p> <p>14 A. I've researched the physician job market, so</p> <p>15 "training," what do you mean? 11:45:12</p> <p>16 Q. Training, been to a continuing education course,</p> <p>17 taken a class, attended a seminar, anything like</p> <p>18 that about -- specifically relating to the</p> <p>19 physician job market.</p> <p>20 A. Not that I'm aware of, no. 11:45:26</p> <p>21 Q. Okay. Have you had any training as it specifically</p> <p>22 relates to the physician compensation market?</p> <p>23 A. From what I've looked at, resource guides, no</p> <p>24 specific training.</p> <p>25 Q. Okay. And when you say -- you've said a couple of 11:45:45</p> <p style="text-align: right;">Page 97</p>

25 (Pages 94 - 97)

<p>1 times now that you've, you know, consulted some 2 resources, looked at some articles. We'll talk 3 about this today. Other than your work in 4 Dr. Bala's case, so before you were retained and 5 undertook an analysis of her job search, 11:46:00 6 employability, earning capacity in this case, had 7 you ever had occasion to research physician -- the 8 physician job market prior to this case? 9 A. I have, yes. 10 Q. Okay. And that was in the context of the Veterans' 11:46:17 11 case we talked about? 12 A. There were two -- 13 Q. Okay. 14 A. -- veteran cases. One was endro, and one was a 15 plastic surgeon, so -- 11:46:30 16 Q. What was the first one, I'm sorry, the specialty? 17 A. Endro -- we call them endros, but it's 18 "endro"-something-"ology." 19 Q. Endocrinologist? 20 A. Yes. 11:46:43 21 Q. Something like that? 22 A. You're good. 23 Q. Well, okay. So other than those two -- are those 24 the only two occasions other than Dr. Bala's -- the 25 work you've done on Dr. Bala's case where you've 11:46:55 Page 98</p>	<p>1 A. Yes. 2 Q. Does that align with your thinking? Yes? 3 A. Yes. 4 Q. Okay. So these questions I'm just asking about the 5 training, not any, you know, article you may have 11:48:40 6 read. Do you understand that distinction? 7 A. Yes. 8 Q. Okay. And so have you ever had any training as it 9 specifically relates to the physician recruitment 10 market? 11:48:52 11 A. So I have trained -- I guess this doesn't -- I've 12 not had any training, no. 13 Q. Okay. Sounds like maybe you've conducted some 14 training to physicians? 15 A. I've -- I've trained recruiters through Good Sam, 11:49:06 16 Providence, PeaceHealth in terms of creating 17 training plans, working with the HR directors to 18 establish a curriculum and then help that 19 individual train. 20 Q. When did you perform these sorts of trainings? 11:49:27 21 A. Many times over the years. 22 Q. Is it anything you do currently? 23 A. I'm not working on one of those training programs 24 currently, no. 25 Q. I don't think anything was mentioned in your CV 11:49:41 Page 100</p>
<p>1 had occasion to evaluate physician job search 2 market? 3 A. Yes. 4 Q. And one of them involved a plastic surgeon and the 5 other was an endocrinologist. Correct? 11:47:07 6 A. Yes. 7 Q. And for both of those situations, you did some 8 research but you did not prepare a formal report. 9 Correct? 10 A. Right. 11:47:17 11 Q. And at no time have you had any specific training 12 as it relates specifically to the physician job 13 market. Is that correct? 14 A. I'm going to say specific training, no. 15 Q. Okay. At any time, have you had any -- at any 11:47:41 16 time, have you had any training specifically 17 related to the physician compensation process? 18 A. Other than speaking with some of the survey 19 material preparers for and/or with persons who 20 utilize that survey and resource docs, no. 11:48:09 21 Q. Okay. And maybe we can -- and tell me if this is 22 the way you would separate this out. What you just 23 described, research, right, reviewing a survey, 24 talking to someone about a survey, that, in my 25 mind, is separate from formal training. 11:48:32 Page 99</p>	<p>1 about that. Did I miss something? 2 A. I think it -- it does mention in my CV that I 3 developed training programs, and that's part of the 4 workers' compensation work that I do. Let me see. 5 And if it doesn't, then maybe I'll throw that in 11:49:58 6 there. 7 Q. So these training programs that you've done from 8 time to time, you help HR in-house recruiters at 9 health systems do what? 10 A. To -- they develop a placement, a training 11:50:20 11 placement for on-the-job training. We develop a 12 curriculum that would include some classes through 13 SHRM, which you're aware of. We -- I evaluate, and 14 there -- there are training prospects throughout 15 the time they're being trained. Usually it's a 11:50:44 16 year, year and a half. We make sure that that 17 individual has the education background to be able 18 to become a recruiter and then their earning 19 capacity once they are done with the training 20 program I can offer because I have a limited 11:51:02 21 budget, and then once that's -- that training is 22 done, they have the potential to move forward by 23 taking additional trainings through SHRM or 24 whoever. I forget all the acronyms of human 25 resource professionals. 11:51:21 Page 101</p>

26 (Pages 98 - 101)

<p>1 Q. Is this something you do as part of your role as a 2 vocational rehabilitation counselor on workers' 3 comp -- 4 A. Yes, it is. 5 Q. -- type situations? 11:51:33 6 A. Yes. 7 Q. And at any of these trainings, have you ever worked 8 with a program for a recruiter to talk about or 9 train on physician compensation? 10 A. No. 11:51:44 11 Q. Pertaining to physician compensation, you're aware 12 that it's standard in the industry to rely on 13 certain compensation surveys to determine 14 appropriate compensation levels for physicians? 15 A. Yes. 11:52:08 16 Q. Can you name some of those surveys. 17 A. Well, the ones that I reviewed in my report were 18 AAMC, American -- I don't know the acronym. And 19 MedAxiom is another. MGMA is another. 20 SullivanCotter is another, and there are several 11:52:37 21 more that my professional organization, when we 22 have a list serve or a chat serve, that, you know, 23 if we have a question, we can say, hey, anybody, 24 have this information? Can you -- can you tell me 25 what are the best -- the best compensation models? 11:52:56 Page 102</p>	<p>1 A. It's not something I considered, you know. I 2 already did my research. I already had my 3 compensation surveys picked out, so I didn't need 4 it. It just confirmed. 5 Q. So describe to me, would this be something you 11:54:36 6 would still have access to? Like could you scroll 7 back and find the communication that you're 8 referring to? 9 A. I'm sure. 10 Q. Okay. And what do you remember, sitting here 11:54:45 11 today, that that contained, or do you remember who 12 posted it? 13 A. Sure. John Berg posted it. It was a list of some 14 of these compensation surveys. The question came 15 from DT North, so it was -- it was, oh, I wonder if 11:55:00 16 this has to do with Bala, but I didn't ask. 17 Q. And would this have been -- so sounds like from 18 what you just said you may have already had 19 reviewed DT North's report, or why would the fact 20 he sent that have been a trigger, in your mind, at 11:55:24 21 the time? 22 A. Yeah, it might have been -- it might have been that 23 I had already reviewed the report. I can't 24 remember. Let me see. And it's not like I go on 25 the list serve all the time. It comes up in my 11:55:37 Page 104</p>
<p>1 So -- and that was a question posed in my list 2 serve, but it wasn't from me, and those were some 3 of them that were brought up. I think I looked at 4 some others, too, a few years back in both those VA 5 cases. 11:53:20 6 Q. You mentioned the list serve. What is -- is that 7 something among like a -- like we have lawyers list 8 serves. Is it something among voc rehab 9 counselors? 10 A. It's part of our ABVE forensic section, and it's -- 11:53:32 11 you know, it's good for training. It's good for 12 asking questions about specific cases and getting 13 responses from other professionals in the field. 14 Q. Did you send or receive any communications on that 15 ABEV list serve pertaining to your work on 11:53:49 16 Dr. Bala's case? 17 A. I didn't, no. 18 Q. Were there communications that maybe you didn't 19 send but you reviewed that informed your analysis 20 and opinions in Dr. Bala's case? 11:54:02 21 A. There was -- there was one that talked about the -- 22 basically the compensation surveys and the best 23 ones to use. 24 Q. Is that part of your file? I don't know that I've 25 seen that document. 11:54:17 Page 103</p>	<p>1 email, pops up if there is a question. Sometimes I 2 will go on it, and sometimes I won't. And let me 3 see. I don't know if I had reviewed his report 4 yet, but I was already reviewing my report, and I 5 had already confirmed that, oh, I'm using this one, 11:55:56 6 this one, this one, and then Mr. Berg, who I 7 respect very much in the -- in the field, you know, 8 said, this is the best one, you know, like AAMC. 9 This is the best one, but you can't get it unless 10 you pay \$1,000, so -- 11:56:18 11 Q. Is that where you got -- I think in your report you 12 referred to the double A -- 13 I've heard it the "double A MC," so I'll call 14 it that. 15 A. Oh, yeah, double A -- 11:56:27 16 Q. But it's AAMC. 17 -- as the gold standard. 18 A. Yes. 19 Q. Is that where that came from? 20 A. Yes. Yes. And people agree with him, so -- 11:56:32 21 Q. And when people agree with him, are you just 22 referring to sort of the chatter that you were -- 23 A. Yes. 24 Q. -- reading on the list serve? 25 A. Yes. 11:56:43 Page 105</p>

27 (Pages 102 - 105)

<p>1 Q. Okay. Is there anything else you relied upon, 2 other than Mr. Berg referring to the AAMC as the 3 gold standard, for purposes of you characterizing 4 it as that in your report?</p> <p>5 A. No. 11:56:58</p> <p>6 Q. What is the -- what does the AAMC relate to? What 7 is it comprising?</p> <p>8 A. It is -- and I'm going to go in here, into the 9 report.</p> <p>10 Q. Sure. That's fine. 11:57:19</p> <p>11 A. Thank you. And it's a salary guide for physician 12 compensation, and this is specifically for the 13 academic -- in my term, the academic arena.</p> <p>14 Q. Right. For the academic arena. How does that 15 differ, for example, from the MGMA survey or the 11:57:48 16 AMGA survey or the other surveys that you've relied 17 upon in your report?</p> <p>18 A. Right. So SullivanCotter is also where I got 19 information for the academic survey, and then the 20 other two that I utilized were the MGMA and the -- 11:58:07 21 which I accessed because it also cost money, 22 access.</p> <p>23 Q. So can we do this? Can I just have you -- I just 24 want to be -- we'll get through your report, and I 25 know that's a reference. 11:58:23</p> <p style="text-align: right;">Page 106</p>	<p>1 statistics. I'm talking specifically about 2 physician compensation surveys that you relied on 3 in your report. Is this the first time you've 4 really had occasion to evaluate this -- this type 5 of data? 11:59:56</p> <p>6 A. No. I think I told you I evaluated it both times 7 when I did the VA work, so --</p> <p>8 Q. Okay. And I think you said in that case it was 9 informally because you didn't do a formal report, 10 right? 12:00:09</p> <p>11 A. Right.</p> <p>12 Q. Okay. So, again -- and if you can't, that's okay, 13 but before we consult your report, are you able to 14 describe any of the differences between the various 15 physician compensation surveys that you relied upon 12:00:22 16 in performing your analysis and reaching your 17 opinions?</p> <p>18 A. There were some differences in the percentages and 19 how they documented their findings. I think I read 20 through AAMC's information and maybe even some of 12:00:40 21 MedAxiom, but I can't pinpoint the differences for 22 you.</p> <p>23 Q. Okay. Do you know how often these benchmark -- 24 physician compensation benchmark surveys are 25 published by the AAMC or the MGMA? Do you have any 12:01:02</p> <p style="text-align: right;">Page 108</p>
<p>1 A. Okay.</p> <p>2 Q. But without referring to your report, can you tell 3 me the difference between the surveys that you 4 relied on?</p> <p>5 A. I'm not sure. That's such a general question. 11:58:30</p> <p>6 Q. So without reviewing your report, would you be able 7 to talk even generally about describing the 8 difference between the AAMC versus the Sullivan -- 9 I'm going to get wrong -- Cotter? Could you 10 identify any differences between them? 11:58:52</p> <p>11 A. Well, not off the top of my head, no.</p> <p>12 Q. Okay. And is that because you are -- you know, you 13 generally don't rely on these surveys in your 14 day-to-day job; this is analysis you did with them 15 with respect to evaluating Dr. Bala's earning 11:59:10 16 capacity; this is sort of the first time you've 17 done something like this. Is that fair?</p> <p>18 MR. BRISCHETTO: Objection. Vague. 19 Go ahead.</p> <p>20 Q. BY MS. BAUMGART: That's okay. You can answer. 11:59:22</p> <p>21 A. First time, you know, I look at survey material, 22 compensation material. I look at wage data, 23 earning potential all the time, so --</p> <p>24 Q. Sure. And that's fair. I assume you do with the 25 work you, do but I'm not talking about the labor 11:59:39</p> <p style="text-align: right;">Page 107</p>	<p>1 sense of that?</p> <p>2 A. Most of them were annual, from what I reviewed.</p> <p>3 Q. I want to turn back to your report, Ms. Broten. We 4 talked a little bit about this already. Page 3 5 where you list the review of records and other 12:01:28 6 documentation. You confirmed to me that these were 7 the totality of documents that you received. My 8 question for you is did you actually review sort of 9 cover to cover all of the information listed on 10 pages 3 and 4 of your report? 12:01:49</p> <p>11 A. Well, the file was very big.</p> <p>12 Q. Agreed.</p> <p>13 A. So I am sure I looked at it, whether I took it all 14 in the several times I looked at it, and referred 15 back to it. I hopefully looked at everything. In 12:02:13 16 terms of the physician compensation reports, I 17 believe I looked at the information that I had 18 provided to me and that I found and -- and then I 19 read some of those articles on the internet that 20 are mentioned at the very last. 12:02:54</p> <p>21 Q. And we'll look at the -- with respect to the 22 physician compensation reports, that second to last 23 bullet point. I think that's where you were 24 referring, right, Ms. Broten?</p> <p>25 A. Yes. 12:03:08</p> <p style="text-align: right;">Page 109</p>

28 (Pages 106 - 109)

<p>1 Q. Okay. You mentioned that some were provided to</p> <p>2 you. If my understanding of the file is correct,</p> <p>3 that would have been provided by Dr. Bala. Is that</p> <p>4 right?</p> <p>5 A. Yes. 12:03:20</p> <p>6 Q. Okay. And then other than the information that</p> <p>7 Dr. Bala provided to you with respect to just the</p> <p>8 physician compensation surveys, did you separately</p> <p>9 access any other survey?</p> <p>10 A. I may have. I'm looking at them now to see -- 12:03:33</p> <p>11 Q. Sure.</p> <p>12 A. -- if any of them were -- no, I don't remember.</p> <p>13 Q. But you know that you reviewed the information</p> <p>14 Dr. Bala provided to you. Correct?</p> <p>15 A. Yes. And she also provided me her password and -- 12:04:02</p> <p>16 and name, you know, user name, to get in --</p> <p>17 Q. Did you use that?</p> <p>18 A. -- to the AAMC. Yeah, I did, actually.</p> <p>19 Q. And --</p> <p>20 A. I had to learn how to do it. I don't remember how 12:04:17</p> <p>21 at this moment.</p> <p>22 Q. Sticking with that for just a moment, how many</p> <p>23 times did you log on through Dr. Bala's user name</p> <p>24 and password to the AAMC?</p> <p>25 A. I think just once. Maybe -- maybe twice. 12:04:30</p> <p style="text-align: right;">Page 110</p>	<p>1 report?</p> <p>2 A. I had other documents, so I didn't need it.</p> <p>3 Q. Would it have --</p> <p>4 A. It has --</p> <p>5 Q. Let me just get my question out. Sorry. Would it 12:06:18</p> <p>6 have -- I know it's hard not to anticipate. It's</p> <p>7 very natural. Would it have changed your ultimate</p> <p>8 calculation as to your assessment of Dr. Bala's</p> <p>9 lost -- alleged lost earnings?</p> <p>10 A. No, it would not have. 12:06:33</p> <p>11 Q. Anything else that you looked at by way of</p> <p>12 physician compensation surveys or benchmarks that</p> <p>13 you didn't ultimately include in your analysis or</p> <p>14 conclusions?</p> <p>15 A. I don't believe so, no. 12:06:47</p> <p>16 Q. Okay. That last bullet, the articles, were these</p> <p>17 articles that -- never mind. I don't have a</p> <p>18 question about that.</p> <p>19 Did you review all of Dr. Bala's deposition?</p> <p>20 Do you remember? 12:07:11</p> <p>21 A. I did, and it was a while ago.</p> <p>22 Q. Okay. Did you review all of the Banner employment</p> <p>23 records, for example, that you were provided?</p> <p>24 A. I'm sure I did.</p> <p>25 Q. Okay. What about all the University of Penn 12:07:23</p> <p style="text-align: right;">Page 112</p>
<p>1 Q. And what did you review?</p> <p>2 A. I went into the EP salary information.</p> <p>3 Q. Did you print anything or download anything?</p> <p>4 A. I sent everything to the attorneys for you.</p> <p>5 Q. Okay. So anything -- and we'll look at that. 12:04:58</p> <p>6 We're not going to spend much time with them, but</p> <p>7 I'll show you the documents just so I'm clear what</p> <p>8 you may have accessed versus what Dr. Bala --</p> <p>9 A. Sure.</p> <p>10 Q. -- sent, but is your testimony that anything -- I 12:05:09</p> <p>11 should say everything you relied upon by way of</p> <p>12 physician compensation surveys, whether it had been</p> <p>13 obtained through your own access to something like</p> <p>14 the AAMC or Dr. Bala providing you with</p> <p>15 documentation, those are all documents contained in 12:05:24</p> <p>16 your file that you provided to the lawyers?</p> <p>17 A. Yes. I don't see the Boston Medical in here. So I</p> <p>18 didn't use it in the report, but I reviewed it.</p> <p>19 Q. Okay. So we're looking at that same second to last</p> <p>20 bullet point. You said you looked at another 12:05:47</p> <p>21 survey, Boston Medical?</p> <p>22 A. Yeah, Boston Medical which is similar to Pinnacle,</p> <p>23 and it just provides compensation that they provide</p> <p>24 to their physicians. Boston Medical University.</p> <p>25 Q. Why didn't you rely on it and include it in your 12:06:06</p> <p style="text-align: right;">Page 111</p>	<p>1 documents? Did you review all those?</p> <p>2 A. I believe I did.</p> <p>3 Q. As you're looking through this list and knowing the</p> <p>4 file you received was large, is there anything that</p> <p>5 jumps out to you that maybe you didn't have time to 12:07:40</p> <p>6 get to or maybe just skimmed?</p> <p>7 A. For this report, no. I don't believe I missed</p> <p>8 anything. I believe I -- I touched on everything.</p> <p>9 Q. And just so I'm clear what you mean by "touched</p> <p>10 on." That means at least give it a glance? 12:08:19</p> <p>11 A. That means look at the page and glance through it</p> <p>12 and then go to the next page and glance through it</p> <p>13 and sometimes make, you know -- I write on my files</p> <p>14 similar to how you're writing all over your report.</p> <p>15 I wish I could do that because it's how I work. 12:08:34</p> <p>16 Q. And you're welcome if you want to make notes on the</p> <p>17 exhibit. That's just fine. It's just marked in</p> <p>18 the case, but it's up to you.</p> <p>19 A. Yeah, I'd rather not. I would probably be advised</p> <p>20 not to. 12:08:48</p> <p>21 Q. Steve may have something to say about that.</p> <p>22 A. Don't touch it.</p> <p>23 Q. I just want you to know whatever is out in front of</p> <p>24 you will be marked.</p> <p>25 MR. BRISCHETTO: Ms. Baumgart is just trying to 12:08:56</p> <p style="text-align: right;">Page 113</p>

29 (Pages 110 - 113)

<p>1 be helpful.</p> <p>2 THE WITNESS: Yeah, yeah.</p> <p>3 MS. BAUMGART: I have my own notes. I don't</p> <p>4 need hers. I have her report.</p> <p>5 THE WITNESS: I made check marks on some of 12:09:04</p> <p>6 them. I can't remember what it was.</p> <p>7 Q. BY MS. BAUMGART: Okay. So was there anything that</p> <p>8 you asked to review to provide your analysis and</p> <p>9 expert opinions that you were not provided with?</p> <p>10 A. Not that I know of. 12:09:22</p> <p>11 Q. You reviewed documents related to Dr. Bala's</p> <p>12 current employment with Citrus Cardiology.</p> <p>13 Correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know what her current status is with Citrus? 12:09:40</p> <p>16 A. Yes. I just found out.</p> <p>17 Q. What did you just find out?</p> <p>18 A. I got a copy of her employment contract with a</p> <p>19 couple of emails. I think you have the same.</p> <p>20 Q. I don't think I do. 12:09:57</p> <p>21 A. Oh.</p> <p>22 Q. I don't have any contract.</p> <p>23 A. Oh, sorry.</p> <p>24 Q. Go ahead. No. No. You can answer the question.</p> <p>25 We'll have it soon. 12:10:03</p> <p style="text-align: right;">Page 114</p>	<p>1 MS. BAUMGART: Okay. All right.</p> <p>2 Huh?</p> <p>3 MS. BRADFORD: We will ask for it.</p> <p>4 MS. BAUMGART: Yeah, we'll talk about it after.</p> <p>5 Q. BY MS. BAUMGART: Okay. Back to you. So what did 12:10:57</p> <p>6 you just learn about Dr. Bala's employment with</p> <p>7 Citrus?</p> <p>8 A. So there is information there that I'm still trying</p> <p>9 to, you know, digest, I guess, if you would, but it</p> <p>10 appears from the -- from more from the emails that 12:11:11</p> <p>11 the contract is being based more on productivity</p> <p>12 than a guaranteed salary, and it just seems to me,</p> <p>13 without knowing exacts, that it's quite a bit less</p> <p>14 than her first contract and year with Citrus.</p> <p>15 Q. And is this an opinion you're staking out now, or 12:11:40</p> <p>16 this is just a preliminary, I just looked at this?</p> <p>17 A. I just looked at it. I'm not saying any opinion at</p> <p>18 this moment. I can't.</p> <p>19 Q. Did you talk to Dr. Bala about it? Have you asked</p> <p>20 her any questions about it? 12:11:54</p> <p>21 A. I have not talked with Dr. Bala about it. It's</p> <p>22 that new.</p> <p>23 Q. Apart from any conversation with Dr. Bala about her</p> <p>24 new -- sounds like what may be a new amendment</p> <p>25 maybe to her current contract, and we'll need to -- 12:12:15</p> <p style="text-align: right;">Page 116</p>
<p>1 MR. BRISCHETTO: I think you do.</p> <p>2 MR. ELLIS: I think you do.</p> <p>3 MS. BRADFORD: We have emails, no contracts.</p> <p>4 MR. ELLIS: The contract was provided before</p> <p>5 the emails. 12:10:13</p> <p>6 MS. BRADFORD: We don't have them.</p> <p>7 MS. BAUMGART: Anyway, we'll take this up at a</p> <p>8 break.</p> <p>9 MR. BRISCHETTO: The original contract is the</p> <p>10 same. 12:10:23</p> <p>11 MS. BAUMGART: Okay.</p> <p>12 THE WITNESS: Right.</p> <p>13 MR. BRISCHETTO: I mean, and what happened is</p> <p>14 they switched her from a guaranteed minimum to an</p> <p>15 extension under the original contract, so if you 12:10:30</p> <p>16 have the email, recent emails, plus the original</p> <p>17 contract, which you should have from the initial</p> <p>18 production, you have everything.</p> <p>19 MS. BAUMGART: So that's the sum total of</p> <p>20 her -- to explain her current -- at least in 12:10:43</p> <p>21 writing the current --</p> <p>22 MR. BRISCHETTO: Correct.</p> <p>23 MS. BAUMGART: -- contractual arrangement with</p> <p>24 Citrus? Okay.</p> <p>25 MR. BRISCHETTO: You got everything we got. 12:10:51</p> <p style="text-align: right;">Page 115</p>	<p>1 it's new to me, too, so I don't quite know what</p> <p>2 that is, but apart from that, in your course of</p> <p>3 conducting your qualitative interviews with her</p> <p>4 during your analysis, did you talk about her Citrus</p> <p>5 contract? 12:12:33</p> <p>6 A. We did some. I'm not a contract expert and -- but</p> <p>7 I do -- I had to understand how physicians get</p> <p>8 paid, and there is various models, right, so</p> <p>9 this -- so we talked about it somewhat.</p> <p>10 Q. And either from that conversation or other 12:12:54</p> <p>11 knowledge you have, what's your general</p> <p>12 understanding of how someone like Dr. Bala, a</p> <p>13 physician in private practice, gets paid?</p> <p>14 A. Well, it's generally clinical and productivity,</p> <p>15 from my understanding. There might be a couple of 12:13:09</p> <p>16 other things included, but if the company or the</p> <p>17 health organization or the private practice is</p> <p>18 making money, then she will make money.</p> <p>19 Q. So is it your general understanding that a</p> <p>20 physician in private practice has the opportunity 12:13:35</p> <p>21 to make more money over time versus someone --</p> <p>22 versus a physician at an academic institution</p> <p>23 because of that productivity piece?</p> <p>24 A. Well, that -- I think an academic institution also</p> <p>25 can make money over time. It's just more -- it's 12:13:53</p> <p style="text-align: right;">Page 117</p>

30 (Pages 114 - 117)

<p>1 not based on productivity necessarily. Sometimes</p> <p>2 it could be, depending on where you're working, if</p> <p>3 it's in a hospital, you know, there is certain --</p> <p>4 like four different aspects and maybe more. It</p> <p>5 just depends. It depends on where you're -- where 12:14:12</p> <p>6 you're working.</p> <p>7 Q. Do you know -- are you familiar with the term</p> <p>8 "RVUs"?</p> <p>9 A. I read about that. I don't know what it is at this</p> <p>10 moment. I couldn't give you the acronym, but, yes, 12:14:29</p> <p>11 I did read about that, so, no, I'm not super</p> <p>12 familiar with it, but I did read about it.</p> <p>13 Q. Okay. Do you know how -- have you heard of the</p> <p>14 work relative value unit, or a wRVU? Did you read</p> <p>15 about that? 12:14:48</p> <p>16 A. Yeah, there is a little W in front of the RVU. I</p> <p>17 read about it. I couldn't repeat it.</p> <p>18 Q. Okay. So I'll ask you this anyway, but you may</p> <p>19 have already anticipate -- or previewed the answer,</p> <p>20 but do you know how a wRVU translates to revenue 12:15:01</p> <p>21 for an organization or the individual physician?</p> <p>22 A. No, I couldn't give you an answer on that. Again,</p> <p>23 I read about it, but I didn't -- you know, it</p> <p>24 didn't resonate.</p> <p>25 Q. Do you know whether a wRVU is reimbursed more or 12:15:23</p> <p style="text-align: right;">Page 118</p>	<p>1 that \$525,000. Right?</p> <p>2 MR. BRISCHETTO: Objection. Argumentative.</p> <p>3 Go ahead.</p> <p>4 THE WITNESS: I didn't consider it, but it --</p> <p>5 if I remember the contract, which I don't, without 12:16:42</p> <p>6 reviewing it again.</p> <p>7 Q. BY MS. BAUMGART: That's fair. We can take a look</p> <p>8 at it.</p> <p>9 (Exhibit 4 marked)</p> <p>10 THE REPORTER: Exhibit 4. 12:17:12</p> <p>11 THE WITNESS: Thank you.</p> <p>12 Q. BY MS. BAUMGART: This look familiar to you?</p> <p>13 A. No.</p> <p>14 Q. Okay. Well, I'll represent --</p> <p>15 A. I don't remember. It was part of a very large and 12:17:23</p> <p>16 it's like this large file.</p> <p>17 Q. Okay. Well, let's turn to Exhibit A, if you would,</p> <p>18 please, of -- this is, for the record, Dr. Bala's</p> <p>19 physician services employment agreement with Citrus</p> <p>20 Cardiology. Do you see the last page, "EXHIBIT A," 12:17:41</p> <p>21 "Productivity Compensation"?</p> <p>22 A. Where are you?</p> <p>23 Q. The last -- the last page, which is Exhibit A.</p> <p>24 A. Okay.</p> <p>25 Q. Did you look at this when you were performing your 12:18:09</p> <p style="text-align: right;">Page 120</p>
<p>1 less based on the physician's specific specialty or</p> <p>2 area of practice?</p> <p>3 A. I don't have an answer for that.</p> <p>4 Q. Do you have any knowledge as to what role the</p> <p>5 government may or may not play in regulating 12:15:35</p> <p>6 physician compensation?</p> <p>7 A. I do not know the answer to that.</p> <p>8 Q. But the time that you wrote your report -- and I</p> <p>9 understand maybe there is some new information,</p> <p>10 although based on counsel's representation, the 12:15:49</p> <p>11 contract hasn't -- contract is the same. But at</p> <p>12 the time that you wrote the report, you note that</p> <p>13 Dr. Bala's wage at Citrus Cardiology -- her base</p> <p>14 salary was \$525,000. Correct?</p> <p>15 A. That -- that's what I understood, yes. 12:16:08</p> <p>16 Q. Okay. And did you review her Citrus contract in</p> <p>17 conducting your analysis and reaching your</p> <p>18 conclusions in your report?</p> <p>19 A. I did. I did, yes.</p> <p>20 Q. Okay. And did you look at -- was it important to 12:16:19</p> <p>21 look at how her compensation was set by Citrus at</p> <p>22 the time you wrote your report?</p> <p>23 A. It was.</p> <p>24 Q. Okay. And you knew, then, if you look at that,</p> <p>25 that she had the ability to make more than 12:16:30</p> <p style="text-align: right;">Page 119</p>	<p>1 earnings analysis with respect to Dr. Bala?</p> <p>2 A. I may have looked at it. I don't believe I</p> <p>3 considered much of it.</p> <p>4 Q. Why wouldn't you have considered much of it?</p> <p>5 A. Because it's a figure that we don't know. I mean, 12:18:24</p> <p>6 she could -- she could work to this, but I didn't</p> <p>7 consider that because she had a guarantee of 525 --</p> <p>8 Q. So I understand --</p> <p>9 A. My understanding.</p> <p>10 Q. You just, when you undertook your analysis and in 12:18:41</p> <p>11 projecting what you conclude to be a loss of</p> <p>12 earning capacity -- is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you did not take into account her ability to</p> <p>15 earn additional compensation from Citrus through 12:18:55</p> <p>16 the productivity compensation we see in Exhibit A.</p> <p>17 Is that correct?</p> <p>18 A. That's right.</p> <p>19 Q. And, again, why didn't you do that?</p> <p>20 A. It's -- it would have been very difficult for me to 12:19:03</p> <p>21 figure out those numbers.</p> <p>22 Q. Back to your report, Ms. Broten. So page 4 at the</p> <p>23 bottom, under the -- I'll wait until you get there.</p> <p>24 Let me know when you're there.</p> <p>25 Okay. Page 4, are you there on your report? 12:20:08</p> <p style="text-align: right;">Page 121</p>

31 (Pages 118 - 121)

<p>1 A. Um-hum, yes.</p> <p>2 Q. "POSTGRADUATE TRAINING," you were just going</p> <p>3 through her education. Then you have an asterisk</p> <p>4 at the bottom where you state you included in the</p> <p>5 file documents "a graph review developed by 12:20:22</p> <p>6 Dr. Bala of the 35 resident physicians" in class --</p> <p>7 "in the class of 1998 and where they are today."</p> <p>8 Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Why did you include that information? 12:20:32</p> <p>11 A. Because --</p> <p>12 Q. Or why did you -- I should -- sorry. Let me ask a</p> <p>13 better question.</p> <p>14 A. Sure.</p> <p>15 Q. Did you request this information from Dr. Bala, or 12:20:40</p> <p>16 did she suggest that she provide it to you?</p> <p>17 A. No. It was in the file.</p> <p>18 Q. Oh, it was already in the file?</p> <p>19 A. Yeah. It was -- it was file documents that I</p> <p>20 reviewed. 12:20:52</p> <p>21 MS. BAUMGART: All right. We're just going to</p> <p>22 mark this.</p> <p>23 (Exhibit 5 marked)</p> <p>24 THE REPORTER: Exhibit 5.</p> <p>25 Q. BY MS. BAUMGART: Is Exhibit 5 the graph that 12:21:16</p> <p style="text-align: right;">Page 122</p>	<p>1 of your analysis in preparing your opinions and</p> <p>2 report?</p> <p>3 A. They look like it, yes.</p> <p>4 Q. Okay. It looks like you took some notes when you</p> <p>5 interviewed Dr. Bala during the course of your 13:37:36</p> <p>6 analysis?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. How many times did you interview Dr. Bala?</p> <p>9 A. Well, two more formidable interviews and then just</p> <p>10 a couple of conversations past that, which should 13:37:50</p> <p>11 be documented.</p> <p>12 Q. Great. And I'll point you to a specific page if I</p> <p>13 have a specific question. Some may be just general</p> <p>14 questions, and then, of course, if I ask you a</p> <p>15 question and you would like to refer to your 13:38:05</p> <p>16 report, just let me know. When you interview and</p> <p>17 evaluate a plaintiff like Dr. Bala, do you make</p> <p>18 credibility assessments or consider credibility?</p> <p>19 A. Well, I look at past records, employment records,</p> <p>20 and I attempt to determine whether or not the 13:38:22</p> <p>21 information from the individual is -- matches the</p> <p>22 information from the file records.</p> <p>23 Q. In addition to that, do you consider whether the</p> <p>24 individual, particularly if the individual like</p> <p>25 Dr. Bala is a plaintiff in a lawsuit seeking money, 13:38:46</p> <p style="text-align: right;">Page 124</p>
<p>1 you're referencing that we just discussed?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay.</p> <p>4 THE WITNESS: Do you mind if I get a scarf?</p> <p>5 I'm a little chilly. 12:21:27</p> <p>6 MS. BAUMGART: Oh, sure. Yeah, we can go off</p> <p>7 the record for just a moment. Actually, why don't</p> <p>8 we just break for lunch.</p> <p>9 (RECESS 12:21 to 1:36)</p> <p>10 (Exhibit 6 marked) 13:36:43</p> <p>11 Q. BY MS. BAUMGART: Ms. Broten, we're back on the</p> <p>12 record following lunch. We have marked as</p> <p>13 Exhibit 6 what I understand to be your case records</p> <p>14 or case notes that were provided to us from your</p> <p>15 file. Is that correct? 13:36:54</p> <p>16 A. Yes.</p> <p>17 Q. And just so you know, they did not come numbered,</p> <p>18 and for ease of efficiency as we talk about them</p> <p>19 today, our office added the numbers 1 through 58</p> <p>20 below. 13:37:06</p> <p>21 A. Okay.</p> <p>22 Q. Okay. So if I ask for a page number, that's what</p> <p>23 I'm referring to. Are these records -- and you're</p> <p>24 free to flip through them -- the totality of your</p> <p>25 handwritten notes that you kept during the course 13:37:19</p> <p style="text-align: right;">Page 123</p>	<p>1 whether -- whether that influences them or the</p> <p>2 information they're sharing with you that they're</p> <p>3 hoping to be awarded, in this case, a large sum of</p> <p>4 money?</p> <p>5 A. It's in the back of my mind, yes. 13:38:59</p> <p>6 Q. And how do you, then, work through that when you</p> <p>7 are -- if that's in the back of your mind, how does</p> <p>8 that, if at all, factor into your analysis and</p> <p>9 ultimate expert opinions?</p> <p>10 A. Well, what I -- I usually didn't know or don't 13:39:13</p> <p>11 know, didn't know in this case, the sum of what she</p> <p>12 was wanting to -- I still don't know what that sum</p> <p>13 might be but -- wanting to try to -- to get. But I</p> <p>14 just ask open-ended questions, and when I ask the</p> <p>15 questions regarding whether or not -- you know, why 13:39:39</p> <p>16 did you go this route, what led you to this route,</p> <p>17 what were your feelings, what are your emotions,</p> <p>18 you know, that's -- that essentially gives me a</p> <p>19 good picture.</p> <p>20 Q. All right. We're going to work through the 13:39:54</p> <p>21 Exhibit 6. I want to start with page 3. There is</p> <p>22 some numbering, and then if we flip to the next</p> <p>23 page, page 4, there is a note -- a Note 7 that I</p> <p>24 think reads "Need AAMC if possible." Do you see</p> <p>25 that? 13:40:33</p> <p style="text-align: right;">Page 125</p>

32 (Pages 122 - 125)

<p>1 A. Yes.</p> <p>2 Q. Yes, and that's referring to the AAMC physician</p> <p>3 compensation survey we've been talking about today?</p> <p>4 A. Yes.</p> <p>5 Q. Did Dr. Bala recommend that you review that if 13:40:39</p> <p>6 possible?</p> <p>7 A. I think I already knew that I needed to rec- -- to</p> <p>8 use it, but she had access.</p> <p>9 Q. Okay. So it might have been you who knew or she</p> <p>10 who recommended. You're not sure? 13:40:52</p> <p>11 A. I don't think she actually had it yet, so I</p> <p>12 recommended it, and I think she purchased it.</p> <p>13 Q. Okay. Did she have to purchase it, or did she</p> <p>14 already have an access?</p> <p>15 A. No, I think she had to purchase it. 13:41:06</p> <p>16 Q. Okay.</p> <p>17 A. I don't remember exactly, but I think it was \$45,</p> <p>18 if I'm correct.</p> <p>19 Q. Okay. If you flip to page 6, please. There is a</p> <p>20 note. Let me find it. Under the "Return to Work 13:41:20</p> <p>21 Attempts." Let me just ask you: These notes, all</p> <p>22 the handwriting is yours. Is that correct?</p> <p>23 A. Oh, yeah.</p> <p>24 Q. Okay. No one else prepared these notes?</p> <p>25 A. Sorry. 13:41:34</p> <p style="text-align: right;">Page 126</p>	<p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. Or I said, it looks like you applied for 200 jobs.</p> <p>4 She might have said, 202. I don't know how that</p> <p>5 came about. 13:42:41</p> <p>6 Q. Okay. But either way, regardless of the impetus</p> <p>7 for it, at some point you knew from the review of</p> <p>8 the records and/or information from Dr. Bala that</p> <p>9 she had applied for 202 jobs, and you relied on</p> <p>10 that number. Correct? 13:42:57</p> <p>11 A. Yes.</p> <p>12 Q. You also have some notes at the top, and they're</p> <p>13 quotes, so if I -- is your note-taking practice, if</p> <p>14 you put quotations around something, you're taking</p> <p>15 down verbatim of what the individual, in this case, 13:43:12</p> <p>16 Dr. Bala, is saying to you?</p> <p>17 A. I try to do that in the interview, yes.</p> <p>18 Q. Okay. And there is things like lost self-esteem,</p> <p>19 traumatized, hard to process, those sorts of</p> <p>20 things? 13:43:25</p> <p>21 A. Yes.</p> <p>22 Q. Were these Dr. Bala's words?</p> <p>23 A. Yes, I believe they were. They're quoted, so I'm</p> <p>24 sure they were.</p> <p>25 Q. Okay. I want to have you turn to page 40, please. 13:43:34</p> <p style="text-align: right;">Page 128</p>
<p>1 Q. That's okay. Did anybody else prepare these notes?</p> <p>2 A. No.</p> <p>3 Q. Okay. So under the "Return to Work Attempts," the</p> <p>4 second line, I think it reads "applied for 202,"</p> <p>5 and would that be jobs? 13:41:44</p> <p>6 A. Yes.</p> <p>7 Q. Was that your understanding, that Dr. Bala told you</p> <p>8 she applied for 202 jobs?</p> <p>9 A. It either came from Dr. Bala or I saw it in the</p> <p>10 records. 13:41:56</p> <p>11 Q. Okay. Did you do anything other than review it in</p> <p>12 a record or receive this information from Dr. Bala</p> <p>13 that she applied for 202 jobs -- anything to</p> <p>14 independently verify that number?</p> <p>15 A. No. I just reviewed it in the records and talked 13:42:11</p> <p>16 with Dr. Bala --</p> <p>17 Q. Sure.</p> <p>18 A. -- about it.</p> <p>19 Q. Sure. I mean, it sounds like she -- would this be</p> <p>20 note -- would these be notes from your first 13:42:22</p> <p>21 interview with Dr. Bala?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Okay. So it looks like she's sharing with you in</p> <p>24 that first interview that she applied for 202 jobs,</p> <p>25 right? 13:42:32</p> <p style="text-align: right;">Page 127</p>	<p>1 So I'm going to have a couple questions about a</p> <p>2 text and just the format, and maybe I'll take this</p> <p>3 up with counsel, but it looks like these</p> <p>4 documents -- is it your handwriting at the top?</p> <p>5 This says "10/20/2023 text from Rupa." Are you on 13:43:56</p> <p>6 page 40?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And so -- but these are not in -- they're</p> <p>9 sort of in a weird format, so we might talk</p> <p>10 about -- do you still have these texts on your 13:44:08</p> <p>11 phone?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Okay. We'll talk about this on a break. So</p> <p>14 could you just read this -- read this to yourself</p> <p>15 and let me know when you're done, please. 13:44:17</p> <p>16 A. Okay.</p> <p>17 Q. Did you get a chance to read -- this is all</p> <p>18 information from Dr. Bala to you?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Why did you ask her to tell you about her 13:45:00</p> <p>21 experience at OHSU and what it did to her?</p> <p>22 A. Because -- and I asked it, I believe, in a phone</p> <p>23 message because I couldn't reach her, and that's --</p> <p>24 and then she just texted this to me because I was</p> <p>25 looking for, you know -- trying to say, okay, when 13:45:18</p> <p style="text-align: right;">Page 129</p>

33 (Pages 126 - 129)

<p>1 did I do this? I know I asked for it. Yeah, to.</p> <p>2 So I asked her to do that because I was creating</p> <p>3 the addendum and I wanted to make a reference to --</p> <p>4 people that go through job search have different</p> <p>5 emotions, and it's a part of the counseling process 13:45:43</p> <p>6 to identify what those emotions are, and maybe</p> <p>7 those can become barriers so -- and ways to improve</p> <p>8 job search.</p> <p>9 Q. Did you ever form an opinion in your expert</p> <p>10 capacity that Dr. Bala had emotional barriers to 13:46:06</p> <p>11 future job search employability earning capacity?</p> <p>12 A. I did not. She is a very strong person and</p> <p>13 personality, so I didn't see that it created a</p> <p>14 barrier. What it may have created was -- were</p> <p>15 parts of, you know, motivation in terms of, "Gosh, 13:46:27</p> <p>16 I just can't do this today" type, which is very</p> <p>17 normal for persons going through job search.</p> <p>18 Q. In having these conversations with Dr. Bala and</p> <p>19 reading her sharing this with you, her experience</p> <p>20 that we're looking at on page 40 of Exhibit 6, what 13:46:53</p> <p>21 impact did that have on you, if any?</p> <p>22 A. You know, I sometimes just -- I didn't remember</p> <p>23 reading the last part. I sometimes read these, and</p> <p>24 it kind of goes in, but it doesn't really make a</p> <p>25 difference in terms of my report. I wasn't 13:47:10</p> <p style="text-align: right;">Page 130</p>	<p>1 opinion. And I'm pretty matter of fact as well.</p> <p>2 So I could understand that. It's important for me,</p> <p>3 though, to know, you know, the impacts of her</p> <p>4 ability to obtain employment, and that's the only</p> <p>5 way I would get that information is by asking 13:48:56</p> <p>6 questions about how is your -- how are you doing</p> <p>7 emotionally? How are you doing with this continued</p> <p>8 what appears to be lack of interest in your -- in</p> <p>9 obtaining work?</p> <p>10 Q. Okay. And correct me if I'm wrong. I think you 13:49:16</p> <p>11 testified that the impact on her that she described</p> <p>12 to you when you talked about her emotional and</p> <p>13 mental state did not, in fact, impact her ability</p> <p>14 to obtain work or future earning capacity. Is that</p> <p>15 your conclusion? 13:49:35</p> <p>16 A. You know, I didn't mention it in my report, you</p> <p>17 know, very -- I may have said a few things, but I</p> <p>18 didn't make it sound as -- how can I say it?</p> <p>19 Q. Definitive?</p> <p>20 A. Right. 13:49:56</p> <p>21 Q. Maybe?</p> <p>22 A. Definitive as this.</p> <p>23 Q. Okay.</p> <p>24 A. So, yeah, so I touch on it, but I never make it a</p> <p>25 big part if there is not a diagnosis to go with it. 13:50:04</p> <p style="text-align: right;">Page 132</p>
<p>1 commenting on mental health, so --</p> <p>2 Q. Did you find yourself or do you find yourself</p> <p>3 sympathizing with her given what she shared with</p> <p>4 you about her experience?</p> <p>5 A. I try really hard not to do that in all of my 13:47:25</p> <p>6 cases.</p> <p>7 Q. But we're human, right?</p> <p>8 A. That's right. You go in and out once in a while.</p> <p>9 No, I don't think it made a difference on my -- the</p> <p>10 impact of my earning capacity analysis. 13:47:37</p> <p>11 Q. And maybe you've already answered this. If you</p> <p>12 have, just tell me, but where did this, the inquiry</p> <p>13 about her experience and her response, where, if at</p> <p>14 all, did that fit into your methodology for</p> <p>15 evaluation of her earning capacity? 13:47:58</p> <p>16 A. Say -- say that again --</p> <p>17 Q. Sure.</p> <p>18 A. -- in a different way.</p> <p>19 Q. Did this -- did this information from Dr. Bala that</p> <p>20 we just looked at, her sharing her experience, what 13:48:11</p> <p>21 her experience was at OHSU and the impact that had</p> <p>22 on her, how, if at all, did that fit into your</p> <p>23 methodology of evaluating her earning capacity?</p> <p>24 A. So her experience is given in a more factual term.</p> <p>25 She's very matter of fact as a personality, in my 13:48:34</p> <p style="text-align: right;">Page 131</p>	<p>1 Q. Okay. So even though it wasn't in your report --</p> <p>2 and I appreciate that, right? I appreciate you,</p> <p>3 you know, you have a right to clarify and</p> <p>4 supplement your report, but just so the record is</p> <p>5 clear, what you're now being definitive about is 13:50:17</p> <p>6 that Dr. Bala's experience at OHSU, the impact it</p> <p>7 had on her, was not a barrier to her employability?</p> <p>8 MR. BRISCHETTO: Object to the characterization</p> <p>9 of the testimony.</p> <p>10 Go ahead. 13:50:33</p> <p>11 THE WITNESS: Say it one more time.</p> <p>12 MS. BAUMGART: Sure. I'll have -- Julie can</p> <p>13 read it back, if you don't mind.</p> <p>14 THE WITNESS: Thanks.</p> <p>15 MS. BAUMGART: If you can.</p> <p>16 THE WITNESS: Thanks, Julie.</p> <p>17 (The reporter read as requested)</p> <p>18 THE WITNESS: Well, no. I think I was talking</p> <p>19 about emotional and mental health.</p> <p>20 Q. BY MS. BAUMGART: Okay. Thank you for clarifying. 13:51:08</p> <p>21 So --</p> <p>22 A. That's what we were --</p> <p>23 Q. So let me just ask you what are you -- what is your</p> <p>24 definitive statement now that was not clear in your</p> <p>25 report with respect to Dr. Bala's emotional state 13:51:16</p> <p style="text-align: right;">Page 133</p>

34 (Pages 130 - 133)

<p>1 and mental health?</p> <p>2 A. I think she was fine when searching for work.</p> <p>3 Q. Okay.</p> <p>4 A. She -- yes.</p> <p>5 Q. So what you're -- what you're clarifying is that 13:51:25</p> <p>6 your observation and opinion was that, with respect</p> <p>7 to Dr. Bala's mental and emotional state or health</p> <p>8 regarding her experience at OHSU, that that did not</p> <p>9 impact -- that was not a barrier to her</p> <p>10 employability and future earning capacity. Did I 13:52:01</p> <p>11 get that right? I want to get it right.</p> <p>12 MR. BRISCHETTO: Objection. Misstates the</p> <p>13 testimony. Asked and answered.</p> <p>14 Go ahead.</p> <p>15 Q. BY MS. BAUMGART: Go ahead. 13:52:08</p> <p>16 A. In a nutshell, yes.</p> <p>17 Q. Okay. Thank you. All right. Let's flip back. I</p> <p>18 think -- yeah, we asked you about 40. We were back</p> <p>19 on page 9, please. On page 9 it looks like your --</p> <p>20 this is again notes from your conversation with 13:52:40</p> <p>21 Dr. Bala. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it looks like you're talking a bit about her</p> <p>24 work history, and Number 2, it's about -- it looks</p> <p>25 like you're speaking about OHSU, and it looks like 13:52:48</p> <p style="text-align: right;">Page 134</p>	<p>1 that's kind of what that was.</p> <p>2 Q. Oh, I see. Okay. And the information that</p> <p>3 Dr. Bala shared that's documented here or if you</p> <p>4 had other conversations with her about it, am I</p> <p>5 correct that she was sharing her experience and her 13:54:22</p> <p>6 impression of what her trajectory may -- had been</p> <p>7 and may be if she would have stayed at OHSU?</p> <p>8 A. Actually, no. I think she was talking about</p> <p>9 Mr. Henrikson, who I may have spelled wrong. I</p> <p>10 think he had a short projectory -- 13:54:37</p> <p>11 Q. Oh, okay. Okay.</p> <p>12 A. I think, but, again, I don't remember.</p> <p>13 Q. Sorry. I didn't mean to talk over you. Fair</p> <p>14 enough. So let's just step away from this for the</p> <p>15 moment and just generally. Did Dr. Bala provide 13:54:50</p> <p>16 you, either in this conversation or other</p> <p>17 conversations, information about what she believed</p> <p>18 her career trajectory and promotion progression and</p> <p>19 timeline at OHSU would have been or could have been</p> <p>20 had she stayed? 13:55:05</p> <p>21 A. Not once.</p> <p>22 Q. Don't you reference that in your report? You make</p> <p>23 some assumptions and based on opinions on what</p> <p>24 would be a likely academic career progression had</p> <p>25 Dr. Bala remained at OHSU? 13:55:21</p> <p style="text-align: right;">Page 136</p>
<p>1 maybe there is a discussion about a promotion or</p> <p>2 promotion timeline from associate professor to</p> <p>3 professor to chief. Is that sort of what I'm</p> <p>4 getting the gist of based on your notes?</p> <p>5 MR. BRISCHETTO: Objection. Vague. 13:53:10</p> <p>6 Go ahead.</p> <p>7 THE WITNESS: Yes. Was that a question?</p> <p>8 Q. BY MS. BAUMGART: I'll rephrase. Yeah. Tell me</p> <p>9 about what -- explain to me the basis of your notes</p> <p>10 under that Section 2, OHSU, that are talking about 13:53:19</p> <p>11 associate professor, some people get promoted in</p> <p>12 two to five years, some in short time.</p> <p>13 A. Right.</p> <p>14 Q. What were you discussing with Dr. Bala?</p> <p>15 A. Right. I think we were talking about her -- and 13:53:33</p> <p>16 this is just from memory.</p> <p>17 Q. Sure.</p> <p>18 A. I think we were talking about her trajectory, and I</p> <p>19 think she mentioned -- and I -- I don't want to say</p> <p>20 this for certainty because I don't remember 13:53:46</p> <p>21 exactly, but she was -- we were talking about the</p> <p>22 path to become a chief, path to become a professor,</p> <p>23 path to become -- stay as an associate professor,</p> <p>24 and she just made the comment that sometimes people</p> <p>25 get promoted quickly; some don't. And essentially 13:54:05</p> <p style="text-align: right;">Page 135</p>	<p>1 A. Yes, but it wasn't from her. That was my -- that</p> <p>2 was my trajectory. That was my resource research.</p> <p>3 That was how I -- I develop earning capacities is I</p> <p>4 come up with that trajectory.</p> <p>5 Q. Okay. And so and we'll talk about that in a 13:55:40</p> <p>6 minute, and thank you for clarifying.</p> <p>7 So 100 percent of your analysis and ultimate</p> <p>8 opinions about a potential career trajectory time</p> <p>9 for promotion to professor and chief had Dr. Bala</p> <p>10 remained at OHSU was 100 percent based on your 13:55:57</p> <p>11 research and 0 percent based on input from</p> <p>12 Dr. Bala?</p> <p>13 A. Absolutely.</p> <p>14 Q. Did you ever speak with anyone at OHSU in your</p> <p>15 process of evaluating a possible career trajectory 13:56:13</p> <p>16 had Dr. Bala remained at OHSU?</p> <p>17 A. I did not.</p> <p>18 Q. Did you speak at any -- with anyone at any other</p> <p>19 academic medical institution?</p> <p>20 A. I did not. Let me think. Who did I talk to? No, 13:56:27</p> <p>21 I don't believe I did. No. I can't think of</p> <p>22 anybody. It would have been in my notes probably.</p> <p>23 Q. And apart from your notes and what's in your</p> <p>24 report, which speaks for itself obviously,</p> <p>25 Ms. Broten, sitting here today, do you have a clear 13:56:49</p> <p style="text-align: right;">Page 137</p>

35 (Pages 134 - 137)

<p>1 memory of what it is you researched to ultimately</p> <p>2 conclude this would have been her likely career</p> <p>3 progression to professor and chief had she remained</p> <p>4 at OHSU?</p> <p>5 A. Sure. I took in a number of factors. One was just 13:57:02</p> <p>6 reading the compensation guides that I utilized. I</p> <p>7 looked at BLS data, Bureau of Labor Statistics</p> <p>8 data. I did talk to the Bureau of Labor Statistics</p> <p>9 several times and also the -- was it the</p> <p>10 community -- it's a part of Bureau of Labor and 13:57:32</p> <p>11 stats -- community survey folks.</p> <p>12 Q. Sorry to interrupt. This is just specifically with</p> <p>13 the question of what a likely --</p> <p>14 A. Trajectory.</p> <p>15 Q. -- trajectory in the academic setting would be. 13:57:43</p> <p>16 Okay. Continue.</p> <p>17 A. No, I have to review that in order to determine --</p> <p>18 I have to determine -- determine what a trajectory</p> <p>19 might look like. I also looked at the residency,</p> <p>20 peer residency chart that you offered right before 13:58:03</p> <p>21 lunch. I looked at those folks and where they were</p> <p>22 in their projectory -- trajectory, sorry.</p> <p>23 Q. Great. Anything else?</p> <p>24 A. I don't think so.</p> <p>25 Q. So speaking of -- well, we'll come to -- we'll come 13:58:27</p> <p style="text-align: right;">Page 138</p>	<p>1 this or why she wanted to send it to you?</p> <p>2 A. Well, we may have -- I think we touched on -- this</p> <p>3 was October 3rd. We probably touched on it in the</p> <p>4 interview, and she sent it.</p> <p>5 Q. Page 15, please, of your case notes. So just to 14:00:20</p> <p>6 clarify, the handwriting at the top, are you --</p> <p>7 because the email -- we're sort of getting these in</p> <p>8 a weird format, right? It's an email that's dated</p> <p>9 November 30th, which is, I think, probably when the</p> <p>10 file was produced. But at the top, you're 14:00:39</p> <p>11 handwriting the dates and then if it's a text</p> <p>12 message or who it's to. Tell me the process you're</p> <p>13 going through as you're reviewing the text thread</p> <p>14 and making this notation.</p> <p>15 A. I tried to -- I tried to copy it on the date that 14:00:51</p> <p>16 the text was there. I really did. But as it came</p> <p>17 through, it said November 30. I thought, oh, crap,</p> <p>18 now I have to go through every single one and, you</p> <p>19 know, find out when it was.</p> <p>20 Q. Okay. 14:01:06</p> <p>21 A. So that's kind of what I did. I rarely have to</p> <p>22 produce any text documents, but --</p> <p>23 Q. And is that because you rarely text the plaintiff</p> <p>24 or the --</p> <p>25 A. I'm rarely asked. I do text plaintiffs or -- 14:01:19</p> <p style="text-align: right;">Page 140</p>
<p>1 back to that Exhibit 5 in a few minutes. I will</p> <p>2 keep going on this.</p> <p>3 Okay. So let's see. Moving through your case</p> <p>4 notes. Page 12. Just a quick question. It looks</p> <p>5 like Dr. Bala is sending you -- this is where maybe 13:58:48</p> <p>6 she's sending you that Exhibit -- Exhibit 5 that we</p> <p>7 talked about?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So I think you may have testified earlier</p> <p>10 that -- and this is fine. I know you got a bunch 13:59:00</p> <p>11 of documents. I just want to clarify to the extent</p> <p>12 we can with your memory. I think your testimony</p> <p>13 earlier was that Exhibit 5 sort of came to you in</p> <p>14 the initial sharing of documents. Does this</p> <p>15 refresh your recollection that Dr. Bala sent it to 13:59:13</p> <p>16 you as attached to this email on October 3rd?</p> <p>17 A. This probably is it.</p> <p>18 Q. Okay. And do you know -- did you ask her to</p> <p>19 prepare this, or how was it that this was sent to</p> <p>20 you and something that you -- how was it that this 13:59:32</p> <p>21 was sent to you?</p> <p>22 A. Oh, sure. No, I don't believe I asked her to</p> <p>23 prepare it. I think she just prepared it and sent</p> <p>24 it.</p> <p>25 Q. And why? Did she say why she wanted you to review 13:59:45</p> <p style="text-align: right;">Page 139</p>	<p>1 and/or defendant --</p> <p>2 Q. Okay.</p> <p>3 A. -- defense counsel on occasion.</p> <p>4 Q. So, to the best of your recollection, and you were</p> <p>5 obviously, I would assume, trying to be -- 14:01:30</p> <p>6 attempting to be accurate in writing down when the</p> <p>7 text was actually --</p> <p>8 A. Yes.</p> <p>9 Q. -- sent and to whom and from whom. Is that</p> <p>10 correct? 14:01:39</p> <p>11 A. Yes.</p> <p>12 Q. And so looks like this was sent on October 5th, you</p> <p>13 to Dr. Bala, and you write, "Let me know when you</p> <p>14 find out whether you are invasive, interventional,</p> <p>15 med, or invasive, non-interventional med. Thank 14:01:51</p> <p>16 you, Dr. Bala. This is Lisa Broten." Is that you,</p> <p>17 your --</p> <p>18 A. Yes.</p> <p>19 Q. -- note to Dr. Bala? And why are you -- so this is</p> <p>20 on October 5th. Why are you needing this 14:02:00</p> <p>21 clarification from her?</p> <p>22 A. Because I wanted to clarify whether she was</p> <p>23 invasive interventional because I think, when we</p> <p>24 were talking earlier on -- on the 5th, she thought</p> <p>25 she wasn't invasive, and I said, well, I think you 14:02:23</p> <p style="text-align: right;">Page 141</p>

36 (Pages 138 - 141)

<p>1 are. And so she said, well, I'm going to get a</p> <p>2 hold of AAMC. And then she came back with saying</p> <p>3 she -- I guess I'm invasive. So she doesn't</p> <p>4 consider -- well, anyway. That's -- that's enough.</p> <p>5 Q. And why would it have been important for you to 14:02:43</p> <p>6 know the difference between these -- whether she's</p> <p>7 invasive or non-invasive?</p> <p>8 A. Well, when you're looking at the salary</p> <p>9 compensation charts, it separates them out, and I</p> <p>10 want to know which one she is. 14:03:01</p> <p>11 Q. So in the context of your analysis and ultimately</p> <p>12 your opinion, it was important for you to know the</p> <p>13 differences because the surveys, in fact, set</p> <p>14 compensation benchmarks based on these categories,</p> <p>15 right? 14:03:14</p> <p>16 A. Yes.</p> <p>17 Q. And not all of them have an EP-specific category,</p> <p>18 do they?</p> <p>19 A. Most of them that I used I thought did but --</p> <p>20 but -- 14:03:24</p> <p>21 Q. Does the AAMC have a specific category for EPs?</p> <p>22 A. Well, I thought I used one for them.</p> <p>23 Q. Just from your recollection. We can --</p> <p>24 A. Yeah, I thought so.</p> <p>25 Q. Okay. Can you tell me what is it that Dr. Bala 14:03:34</p> <p style="text-align: right;">Page 142</p>	<p>1 cardiologist, first internal medicine and then</p> <p>2 general cardiologist, three years maybe of that</p> <p>3 residency, or was it four? And then another two,</p> <p>4 three years doing EP training.</p> <p>5 Q. Page 16. Page 16 appears to be -- looks like there 14:05:30</p> <p>6 is a thread initially below from Dr. Bala to you</p> <p>7 and then counsel with the subject "Matt -- all of</p> <p>8 these need to be added to Lisa's folder" and then a</p> <p>9 number of what I think are Excel-type spreadsheets</p> <p>10 compensation surveys, I think. Does this ring a 14:05:59</p> <p>11 bell, this information being forwarded to you?</p> <p>12 A. Yep, yes.</p> <p>13 Q. And it looks like -- is this your understanding</p> <p>14 that it was information that Dr. Bala had gathered</p> <p>15 and through counsel sent on to you? 14:06:12</p> <p>16 A. Yes.</p> <p>17 MS. BAUMGART: Okay. I'm just going to mark</p> <p>18 these so they're in the record. I don't have any</p> <p>19 questions, so maybe we'll go off the record, mark</p> <p>20 them and have you identify them. 14:06:23</p> <p>21 (RECESS 2:06 to 2:08)</p> <p>22 (Exhibits 7 through 12 marked)</p> <p>23 Q. BY MS. BAUMGART: All right, Ms. Broten. We're</p> <p>24 back on the record. We took a break to mark what I</p> <p>25 believe are the attachments to the email we see on 14:08:51</p> <p style="text-align: right;">Page 144</p>
<p>1 does as an electrophysiologist?</p> <p>2 A. Yeah, I've been -- I've been trying to -- there is</p> <p>3 some very short descriptions and so -- and I've</p> <p>4 been trying to, you know, what does it look like?</p> <p>5 And essentially she works on the electric -- 14:03:55</p> <p>6 electric, well, I guess the electro -- electric or</p> <p>7 electronic -- electrical processes of the heart,</p> <p>8 ablations. There is a lot of other things,</p> <p>9 defibrillators, defibrillate.</p> <p>10 THE REPORTER: Can you speak up a little.</p> <p>11 THE WITNESS: I'm thinking defibrillate. I'm</p> <p>12 not sure it's the right word. But she works on the</p> <p>13 electrical processes of jump in the heart, A-fib,</p> <p>14 those types of diagnoses.</p> <p>15 Q. BY MS. BAUMGART: And do you know how that differs 14:04:40</p> <p>16 from the role of a cardiologist?</p> <p>17 A. A cardiologist is more general and works with</p> <p>18 disease primarily.</p> <p>19 Q. Do you know what sorts of qualifications someone</p> <p>20 like Dr. Bala has to possess to be an 14:04:54</p> <p>21 electrophysiologist?</p> <p>22 A. I did review that, and I'm not sure I wrote it in</p> <p>23 the report or not, but I think I even attached it</p> <p>24 as part of my attached references. Yeah, she has</p> <p>25 to have additional time after becoming a general 14:05:12</p> <p style="text-align: right;">Page 143</p>	<p>1 page 16 of Exhibit 6, and we've marked them as</p> <p>2 Exhibits 7 through 12 of your deposition. Are you</p> <p>3 generally familiar with these documents?</p> <p>4 A. Well, you know, I didn't copy them like this, and I</p> <p>5 have a paper file, so I copied them differently, 14:09:13</p> <p>6 and I believe you have copies of my copies of what</p> <p>7 I used and highlighted, so they're generally</p> <p>8 familiar.</p> <p>9 Q. Okay. So let me just ask you this. So you already</p> <p>10 testified that Exhibit 7 through 12 were, in fact, 14:09:29</p> <p>11 sent to you by Dr. Bala. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And did you review them or rely on them in</p> <p>14 performing your analysis and ultimate opinions?</p> <p>15 A. Some of them, yes. 14:09:46</p> <p>16 Q. Okay. And do you know, sitting here today, which</p> <p>17 of these Exhibits 7 through Exhibit 12 you would</p> <p>18 have relied upon and which you didn't?</p> <p>19 A. You know, I would really like to see my copies</p> <p>20 because these don't -- I don't know which ones. 14:09:58</p> <p>21 Q. Yeah. This is --</p> <p>22 A. This is not my -- this is not what I reviewed. I</p> <p>23 don't have these.</p> <p>24 Q. Well, and I can represent to you we don't -- I can</p> <p>25 show you something else that maybe you're thinking 14:10:09</p> <p style="text-align: right;">Page 145</p>

37 (Pages 142 - 145)

<p>1 of. This is the only way this information came to</p> <p>2 us. We did not get it printed in anything else,</p> <p>3 but let me show you something else that maybe</p> <p>4 you're referring to.</p> <p>5 THE REPORTER: Exhibit 13. 14:10:41</p> <p>6 (Exhibit 13 marked)</p> <p>7 MS. BAUMGART: Let me mark one more thing.</p> <p>8 (Exhibit 14 marked)</p> <p>9 Q. BY MS. BAUMGART: So you were testifying that sort</p> <p>10 of the format of Exhibit 7 through 12 didn't look 14:11:25</p> <p>11 familiar to you. Is Exhibit 13 something that</p> <p>12 looks more familiar to you?</p> <p>13 A. You know, I think I printed my own and out of</p> <p>14 this -- out of these copies, and mine just are much</p> <p>15 different, so I'm sorry if I don't -- 14:11:42</p> <p>16 Q. That's okay. That's okay. So when you say this,</p> <p>17 let's go back to Exhibit 7 through 12. Okay?</p> <p>18 A. Um-hum (affirmative response).</p> <p>19 Q. So these, even though you may have viewed them and</p> <p>20 printed them in a different -- maybe a, you know, 14:11:54</p> <p>21 portrait versus landscape, but do you remember</p> <p>22 consulting at least some of this information that</p> <p>23 Dr. Bala sent you that's represented in Exhibit 7</p> <p>24 through 12? Correct?</p> <p>25 A. Yes. 14:12:10</p> <p style="text-align: right;">Page 146</p>	<p>1 sent you Exhibit 7 through 12. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. And she sent you these -- these are physician comp</p> <p>4 surveys from AAMC. They're all from AAMC.</p> <p>5 Correct? 14:14:04</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And my question was whether you, in fact,</p> <p>8 relied on the information Dr. Bala sent you, and</p> <p>9 you said -- I think you said some of it. You</p> <p>10 looked at some -- some you did; some you didn't. 14:14:18</p> <p>11 Is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So then my question was whether the</p> <p>14 information that you relied upon that Dr. Bala sent</p> <p>15 you, did you do anything independently to verify 14:14:26</p> <p>16 these numbers or the accuracy of the information?</p> <p>17 And I thought you said no.</p> <p>18 A. I don't -- other than going on AAMC myself, no.</p> <p>19 Q. Okay. So tell me what you did when you went on --</p> <p>20 you logged in -- I think you said maybe once or 14:14:45</p> <p>21 twice -- under Dr. Bala's log-in on the AAMC. Were</p> <p>22 you looking at what she sent you? Were you looking</p> <p>23 at other information? What is it that you were</p> <p>24 accessing?</p> <p>25 A. I was accessing this information. 14:14:59</p> <p style="text-align: right;">Page 148</p>
<p>1 Q. Okay. And other than review it -- and maybe you</p> <p>2 reviewed it in a different visual form, online or</p> <p>3 printed -- did you do anything independently to</p> <p>4 verify the information contained in the information</p> <p>5 Dr. Bala sent you in Exhibit 7 through 12? 14:12:24</p> <p>6 A. No.</p> <p>7 Q. Okay. We're done with these. You can put these</p> <p>8 aside. Did she -- did Dr. Bala share with you what</p> <p>9 she did to prepare Exhibit 7 through 12? Did she</p> <p>10 talk to you about in your conversation what she was 14:12:54</p> <p>11 going to do or anything like that?</p> <p>12 A. Not in terms of the preparation, no.</p> <p>13 Q. What did she talk to you about?</p> <p>14 A. That I -- you know, I asked her -- basically I</p> <p>15 said, can you share with me your memberships so 14:13:05</p> <p>16 that I can get online and look -- look at it</p> <p>17 myself, and then she sent this over. So basically</p> <p>18 I had this, and then I looked online and compared,</p> <p>19 and then I printed my own copies, not from -- well,</p> <p>20 it could have been from this, from her email, 14:13:29</p> <p>21 but -- and maybe it was, but my printer just didn't</p> <p>22 print it as beautifully as this.</p> <p>23 Q. Got it. Okay. So I want to go back because I</p> <p>24 maybe heard something different than your answer to</p> <p>25 my question a moment ago. So we know that Dr. Bala 14:13:45</p> <p style="text-align: right;">Page 147</p>	<p>1 Q. And why were you going on to access that</p> <p>2 information when you already had it?</p> <p>3 A. Because I wanted to verify it and just look at it,</p> <p>4 you know. I wanted to go on AAMC. I have not</p> <p>5 actually been on it before, and it was a good way 14:15:15</p> <p>6 for me to -- to get on and look.</p> <p>7 Q. And what, if any, records do you have that -- and I</p> <p>8 don't mean this to question your veracity, but I</p> <p>9 don't have any other records that would support</p> <p>10 that you did that, so what, if any, records do you 14:15:30</p> <p>11 have that would support that you independently</p> <p>12 logged on, printed, reviewed this type of</p> <p>13 information to verify what Dr. Bala sent you in</p> <p>14 these raw Excel spreadsheets?</p> <p>15 A. I don't know. I don't know how to answer that. 14:15:45</p> <p>16 Q. Well, you had mentioned you printed something that</p> <p>17 looked different.</p> <p>18 A. Yeah. I might -- I may have, and I don't know for</p> <p>19 sure, but I may have printed this, but it just</p> <p>20 looked different on my printer, so does that make 14:15:57</p> <p>21 sense?</p> <p>22 Q. And when you say "printed this," we're still</p> <p>23 talking about the same information Dr. Bala sent to</p> <p>24 you, Exhibit 7 through 12. It may have just</p> <p>25 printed in a different type of format? 14:16:12</p> <p style="text-align: right;">Page 149</p>

38 (Pages 146 - 149)

<p>1 A. Yes, I think that's what it was.</p> <p>2 Q. Okay.</p> <p>3 A. That's why this -- this doesn't look as -- doesn't</p> <p>4 look the same as what I viewed.</p> <p>5 Q. All right. So I think we're clear on that. 14:16:21</p> <p>6 A. Okay.</p> <p>7 Q. What I'm not clear on is what, if any, steps you</p> <p>8 took to either verify the information Dr. Bala sent</p> <p>9 you in Exhibit 7 through 12. What, if any, steps</p> <p>10 did you take -- and maybe you didn't. I thought 14:16:34</p> <p>11 you said earlier you didn't.</p> <p>12 A. I don't think I did.</p> <p>13 Q. Okay. Okay. Then you did log on once or twice</p> <p>14 yourself to the AAMC website. Correct?</p> <p>15 A. I did, yes. 14:16:49</p> <p>16 Q. And when did you do that?</p> <p>17 A. It would have been right around this same time.</p> <p>18 Q. And do you have it --</p> <p>19 A. So --</p> <p>20 Q. Sorry. Go ahead. 14:16:59</p> <p>21 A. I -- yeah, I'm just looking here to see if it was</p> <p>22 charted. I would think that it would have been</p> <p>23 around this same time, around the same day, but I</p> <p>24 don't know. I guess I didn't document that I did</p> <p>25 that. I'm missing some billing. 14:17:40</p> <p style="text-align: right;">Page 150</p>	<p>1 Q. Okay. So you're thinking this may have been when</p> <p>2 you received the initial file from counsel that</p> <p>3 this -- this was something in here?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And what's your understanding of who 14:19:37</p> <p>6 prepared this? Is this something from Dr. Bala</p> <p>7 again that was passed on ultimately to you?</p> <p>8 A. I believe so.</p> <p>9 Q. Okay. This wasn't -- these weren't excerpts that</p> <p>10 you took from the AAMC and took a photo or printed? 14:19:47</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. That's not my thumb.</p> <p>14 Q. Did you rely on the information in Exhibit 14 in</p> <p>15 preparing your analysis and ultimate conclusions? 14:19:56</p> <p>16 A. I used this documentation from Exhibit 7</p> <p>17 through 12.</p> <p>18 Q. Okay.</p> <p>19 A. So I did not rely on this information.</p> <p>20 Q. Okay. Thank you. Back to your -- back to your 14:20:12</p> <p>21 case notes, page 22. It looks like there is a</p> <p>22 text. It looks like some SullivanCotter</p> <p>23 information. Was that again Dr. Bala sending you</p> <p>24 some SullivanCotter survey information?</p> <p>25 A. Yes. 14:20:42</p> <p style="text-align: right;">Page 152</p>
<p>1 Q. Okay. And apart from the billing documentation, do</p> <p>2 you remember -- let me ask it this way: The</p> <p>3 information, the survey information from the AAMC</p> <p>4 that you relied on in forming your opinions and</p> <p>5 ultimate -- excuse me, your analysis and ultimate 14:18:00</p> <p>6 opinions in your report, did that come from what we</p> <p>7 see in Exhibit 7 through -- 7 through 12?</p> <p>8 A. I believe so because I'm recognizing the titles on</p> <p>9 the top, and when you look inside, yes --</p> <p>10 Q. Okay. 14:18:18</p> <p>11 A. -- there is information in there that I utilized.</p> <p>12 Q. Okay. Very good. Thank you. That's all I have, I</p> <p>13 think, about those spreadsheets.</p> <p>14 Can you look at Exhibit 14, please.</p> <p>15 Exhibit 14, I believe, are also -- is also some 14:18:45</p> <p>16 data from -- I think it's also data from the AAMC.</p> <p>17 Yes, at the bottom. Faculty salary report. Does</p> <p>18 this look familiar to you, these --</p> <p>19 A. Yeah, that looks familiar as well.</p> <p>20 Q. Some of these -- it looks like maybe a photo, 14:19:09</p> <p>21 right? Somebody sent these photos or some fingers</p> <p>22 on the side, a hand on the side of some of the</p> <p>23 pages?</p> <p>24 A. I'm thinking this was in the file documents that I</p> <p>25 received. 14:19:23</p> <p style="text-align: right;">Page 151</p>	<p>1 Q. And did you rely on that information from Dr. Bala</p> <p>2 in preparing your analysis and ultimate</p> <p>3 conclusions?</p> <p>4 A. I believe I did.</p> <p>5 Q. Did you do anything independently to verify that 14:20:50</p> <p>6 information once you received it or just -- just</p> <p>7 utilized it as it came to you?</p> <p>8 A. I went to the website, and I printed it.</p> <p>9 Q. And where would those documents be?</p> <p>10 A. You should have them. 14:21:09</p> <p>11 Q. What would you expect we would have different than</p> <p>12 what Dr. Bala sent to you? What do you expect we</p> <p>13 would have different than what Dr. Bala sent to</p> <p>14 you?</p> <p>15 A. Oh, I don't think you have anything different. 14:21:21</p> <p>16 This is -- this is MGMA. I don't know where the</p> <p>17 SullivanCotter -- I have SullivanCotter in my</p> <p>18 files, so --</p> <p>19 Q. Oh, I see. You know, Ms. Broten, I think I</p> <p>20 misunderstood you. Now that I see she sent you a 14:21:35</p> <p>21 link, not an attachment.</p> <p>22 A. Right.</p> <p>23 Q. So is it your testimony that you clicked on the</p> <p>24 link, went to the website, printed the information</p> <p>25 Dr. Bala directed you to? 14:21:43</p> <p style="text-align: right;">Page 153</p>

39 (Pages 150 - 153)

<p>1 A. Most likely, yes.</p> <p>2 Q. Very good. Thank you. Okay. Page 23. So this is</p> <p>3 one, you know -- if you do still have the text, I</p> <p>4 think this is one we would really like to be able</p> <p>5 to look at because it looks like a back-and-forth, 14:22:02</p> <p>6 and I don't know who said what.</p> <p>7 A. Okay.</p> <p>8 Q. Do you have the text on your phone?</p> <p>9 A. I may. I don't know. I'd have to look. This</p> <p>10 looks like a text back and forth from her and 14:22:21</p> <p>11 myself.</p> <p>12 Q. And do you know -- and if you don't know with</p> <p>13 certainty, I don't want to waste the time because</p> <p>14 we'll just look at the text, but --</p> <p>15 A. Sure. 14:22:31</p> <p>16 Q. -- do you know, just sitting here, sort of who said</p> <p>17 what, who said what?</p> <p>18 A. Yes. Let's see. So the first two sentences would</p> <p>19 be from Dr. Bala.</p> <p>20 Q. So why don't you, just for a clear record, just 14:22:47</p> <p>21 read -- maybe just read, Dr. Bala said, and read it</p> <p>22 and then your response. Let's just do it that way.</p> <p>23 A. Sure. So "I found this also -- salary data from</p> <p>24 Sullivan Cotter. They are like MGMA." There</p> <p>25 should be a period, but there isn't. 14:23:05</p> <p style="text-align: right;">Page 154</p>	<p>1 A. Yes.</p> <p>2 Q. And the rest is your text?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. When you wrote, if it looks good, I'll add</p> <p>5 it to my graph section, meaning the converse; if it 14:24:28</p> <p>6 doesn't look good or isn't helpful to Dr. Bala, you</p> <p>7 weren't going to add it?</p> <p>8 A. Well, I don't know. If it -- if it looked like it</p> <p>9 would support the figures that I'm working with,</p> <p>10 then I would add it, if I could determine if they 14:24:44</p> <p>11 were actual figures that I needed to use. I hadn't</p> <p>12 looked at the information yet.</p> <p>13 Q. When you were doing your earnings analysis and</p> <p>14 determining which data to use from which surveys,</p> <p>15 did the fact whether or not it would sort of, for 14:25:03</p> <p>16 lack of a better word, help or hurt Dr. Bala factor</p> <p>17 into your decision-making what information went</p> <p>18 into your graphs and analysis?</p> <p>19 A. I didn't think that way, no.</p> <p>20 Q. How did you decide what information to use and what 14:25:16</p> <p>21 information not to use? What looked good to use</p> <p>22 and what did not look good to use? How did you</p> <p>23 make that determination?</p> <p>24 A. Well, I didn't necessarily do it that way. I</p> <p>25 looked at the information that was available, and 14:25:29</p> <p style="text-align: right;">Page 156</p>
<p>1 Thank you -- from me, from Lisa: Thank you.</p> <p>2 Please let me take a look at it probably in a</p> <p>3 couple hours. I'm going to head back into the</p> <p>4 office and won't do anything with it until</p> <p>5 tomorrow. If it looks good, I'll add it to my 14:23:21</p> <p>6 graph section of the report, and hopefully by</p> <p>7 tomorrow evening, I'll have figures for the</p> <p>8 economist to work on. It could be used as one</p> <p>9 more line --</p> <p>10 Let me read it first. 14:23:38</p> <p>11 Q. Sure.</p> <p>12 A. Oh, it could be used as -- that looks like from me,</p> <p>13 too -- used at one more line of support for</p> <p>14 figures, but I want to look at it first. And I'm</p> <p>15 currently using cardiology invasive interventional 14:23:52</p> <p>16 medicine figures.</p> <p>17 So that's all from me.</p> <p>18 Q. Okay.</p> <p>19 A. That whole paragraph.</p> <p>20 Q. So the best of your recollection and subject to 14:24:03</p> <p>21 confirmation looking at the actual text is that</p> <p>22 Dr. Bala -- the only portion you're attributing to</p> <p>23 Dr. Bala is just the initial "I found this also --</p> <p>24 salary data from Sullivan Cotter. They are like</p> <p>25 MGMA"? 14:24:19</p> <p style="text-align: right;">Page 155</p>	<p>1 this wasn't available to me, or whatever -- which</p> <p>2 one it is -- it isn't that one, the</p> <p>3 SullivanCarter -- Cotter -- although I knew about</p> <p>4 it, and -- and so basically I just used the figures</p> <p>5 that were there. 14:25:50</p> <p>6 Q. Were there any figures that you had available to</p> <p>7 you, either your own access, information sent from</p> <p>8 Dr. Bala, whether it's publicly available, that you</p> <p>9 were aware of or looked at and then ultimately did</p> <p>10 not use or factor into your analysis? 14:26:08</p> <p>11 A. There were -- there were none.</p> <p>12 Q. If you could just put your report next to you,</p> <p>13 we'll be flipping back and forth a little bit,</p> <p>14 Ms. Broten, and I'm looking to page -- what starts</p> <p>15 on the very bottom of page 17 and continues onto 14:26:33</p> <p>16 page 18. The tables in your report --</p> <p>17 A. Um-hum (affirmative response).</p> <p>18 Q. -- did you --</p> <p>19 A. Yes.</p> <p>20 Q. Did you prepare these? 14:26:45</p> <p>21 A. I did.</p> <p>22 Q. Did anybody assist you in preparing these?</p> <p>23 A. My typist. I handwrote them, and I said, can you</p> <p>24 please make this look good.</p> <p>25 Q. Okay. So apart from someone typing them in, as far 14:26:57</p> <p style="text-align: right;">Page 157</p>

40 (Pages 154 - 157)

<p>1 as determining data to use, whether to use the mean 2 or the median, what percentile, anyone assist you 3 with making those determinations? 4 A. No. 5 Q. Did Dr. Bala suggest that her wage would be 14:27:13 6 somewhere near the 75th percentile? Is that why 7 you used that in that first -- the first table, top 8 of page 18? 9 A. Right. Not at all. She did not, and I did not 10 want her to have any say in my figures. 14:27:29 11 Q. The numbers that we see, the calculations and 12 ultimate numbers that we see, again pages 18 13 through 20, on your -- on your table, did anything 14 about these change as you progressed through your 15 analysis, either, you know, we're higher at some 14:28:10 16 point; we're lower at some point? 17 A. Well, the numbers were from these documents. 18 Q. And when you say "these documents," Exhibit 7 19 through 12? 20 A. Yes. 14:28:23 21 Q. Okay. 22 A. And so what I did was attempt to put the 23 information in a graph form directly from what I 24 viewed here. Then what -- in these documents, 7 25 through 12. And then what I did was decide and 14:28:44 Page 158</p>	<p>1 analysis and conclusions? 2 A. Yes. 3 Q. And similar to, I think, your prior testimony, that 4 you reviewed what she sent you and, to the extent 5 you thought it appropriate, used it. Is that 14:32:15 6 right? 7 A. Yes. 8 Q. Page 31 of your case notes. Is this another 9 back-and-forth text message between you and 10 Dr. Bala? 14:32:28 11 A. Looks like it is, and the first -- I'll just 12 repeat. "Lisa: I found" the salary -- "this 13 salary report too. If you look at the tables at 14 the end, you will see salary data for" Cotter -- 15 Cardiology -- EP Page 48 -- salary info," period. 14:32:55 16 There should be a period there. 17 And then me: Oh thank you. I'll take a look 18 at it. I'm hoping to have the report done by this 19 evening, at least a good draft. 20 I was on my way to Minnesota, so I -- I had to 14:33:15 21 work fast. 22 Dr. Bala may -- Dr. Bala may you -- maybe you 23 could answer this question quickly -- or answer 24 this quickly, but I'm looking at the MedAxiom 25 report, and what exactly is integrated 14:33:31 Page 160</p>
<p>1 make some decisions and opinions on where 2 Dr. Bala's experience, skills, education lent her 3 in terms of the percentiles used, you know, whether 4 it would be a mean and/or the 75th percentile. 5 THE WITNESS: And I don't know. This video 14:29:17 6 starts -- it's looking at me, so is something wrong 7 there? Okay. It's kind of odd to see myself. 8 MS. BAUMGART: Yeah, we can fix that. Sure. 9 (RECESS 2:29 to 2:30) 10 Q. BY MS. BAUMGART: Okay. I think I got my -- I'm 14:30:50 11 going to ask you about your actual numbers in just 12 a minute, so I want to keep moving. Back to your 13 case notes, page 30, Ms. Broten. While you're 14 getting there, just one quick clarification. I do 15 see on page 18 of your report, that first table, 14:31:30 16 that it does look like you relied on data from 17 SullivanCotter. I thought you said a moment ago 18 you didn't have access to that. Is that -- 19 A. No, I did say I had access. I think it was in the 20 text, and we went over that. 14:31:46 21 Q. Okay. Sorry. Maybe I misheard you. All right. 22 Page 30, looks like Dr. Bala is sending you some 23 additional survey information from MedAxiom? 24 A. Yes. 25 Q. Did you rely on that information in performing your 14:32:01 Page 159</p>	<p>1 electrophysiologist compared to private? Does it 2 have anything to do with teaching and research and 3 academic? I haven't read the whole report, and 4 I've just been cruising through it. 5 So that's all me. 14:33:49 6 Q. Okay. So it looks like the note starts or the text 7 starts with Dr. Bala sending you another salary 8 report? 9 A. Yes. 10 Q. And, again, had you asked her to send these various 14:33:59 11 salary reports to you, including Exhibit 7 12 through 12, or she just sort of did it on her -- on 13 her own? 14 A. You know, we talked about it because I was 15 searching for them, and then she was very 14:34:16 16 proactive. 17 Q. And it also looks, in this page 31 that you just 18 read you asked Dr. Bala what exactly is an 19 integrated electrophysiologist compared to private. 20 Why were you asking her that, do you recall? 14:34:38 21 A. Because I needed to know the difference. It was -- 22 I believe it's in the MedAxiom -- there was a 23 statement somewhere about integrated versus 24 private, and I needed to find out what that 25 difference was. 14:34:50 Page 161</p>

41 (Pages 158 - 161)

<p>1 Q. Okay. And at this point, you were confirming, as 2 we look on page 33, confirming with Dr. Bala that 3 she, indeed, was working in private practice with 4 Citrus, right?</p> <p>5 A. Yes. 14:35:03</p> <p>6 Q. Was that the first time, do you think, that you had 7 clarity on her current job, that it was in private 8 practice with Citrus?</p> <p>9 A. I knew that it was in private practice, looking at 10 the employment contract, but it helped me define 14:35:18 11 integrated versus private group.</p> <p>12 Q. The top of 33, is this you, "Awe, thanks for 13 finding that to me"? Is that you writing to 14 Dr. Bala?</p> <p>15 A. I believe so. Yeah. And I was assuming she was 14:35:42 16 integrated, but --</p> <p>17 Q. And at this point, are you specifically -- are you 18 needing to look for more data for purposes of your 19 analysis, or is it Dr. Bala just continuing to send 20 you information? 14:35:56</p> <p>21 A. Actually I wanted more data, so --</p> <p>22 Q. Page 38, please. At the bottom right corner, it 23 looks like a note, "all was closed to her." Do you 24 know what you were referring to?</p> <p>25 A. No, I'm not sure what that is. 14:36:36 Page 162</p>	<p>1 turned 91, so, let's see. I must have come back -- 2 I don't remember the dates, but it was a good week. 3 And so I was getting back into my report, and when 4 I -- so what's your question? I'm sorry. I 5 forget. 14:38:45</p> <p>6 (The reporter read as requested)</p> <p>7 THE WITNESS: Yes, I'm still working on it.</p> <p>8 Q. BY MS. BAUMGART: Working on it. And still, it 9 looks like, from this note and then the next page, 10 page 42, still asking Dr. Bala for clarity about 14:38:54 11 what it is that an EP actually does, right?</p> <p>12 A. Right. Yes.</p> <p>13 Q. And then on 42 -- let's see, 43. 46, please. 14 So 46, I think, if your dates are correct, this 15 looks like November 28th, so this would be notes 14:39:25 16 that pertain to the conversations you had related 17 to the rebuttal report. Does that align?</p> <p>18 A. I'm going to read it --</p> <p>19 Q. Sure.</p> <p>20 A. -- real quick here, please. 14:39:40</p> <p>21 Q. I'm just looking at the date.</p> <p>22 A. I don't remember.</p> <p>23 Q. And my question is, while you're refreshing your 24 recollection, Ms. Broten, that starting at page 46, 25 given the date of November 28th, 2023, that this 14:39:59 Page 164</p>
<p>1 Q. Okay. And then if you go straight up that right 2 side towards the top, again we see that 202 jobs 3 applied for. Correct? Like before Dr. Bala is 4 sharing this number with you, right?</p> <p>5 A. Yes. 14:36:52</p> <p>6 Q. Okay. 41. We talked about 40. 41, please. So I 7 think that the date of this October 23rd -- I think 8 your report is dated the 27th, so a couple days 9 before you finalized your report. It looks like 10 from the notes that you're asking more questions 14:37:27 11 about what exactly it is she does. Is that right?</p> <p>12 A. Yes.</p> <p>13 Q. So you've, I think, been working on this for about 14 two months, right? I think you were engaged the 15 end of August? That's what -- 14:37:44</p> <p>16 A. No.</p> <p>17 Q. -- your retention agreement says?</p> <p>18 A. Well, I didn't start really working on it 19 until 9/30.</p> <p>20 Q. So 9/30 is when you started working on it? 14:37:52</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. And this is a couple -- couple days from the 23 finalizing of the report. I assume you're sort of 24 heavy into your analysis by now?</p> <p>25 A. Yes. I took some time off because my dad 14:38:05 Page 163</p>	<p>1 looks to be notes from additional conversations you 2 had with Dr. Bala after receiving defense expert 3 reports, including from Jennifer Moody and 4 DT North. Correct?</p> <p>5 A. Possibly. Do you see their names anywhere? 14:40:17</p> <p>6 Q. Well, did you receive and review rebuttal reports 7 from -- excuse me, I probably said the wrong thing. 8 Did you receive the expert reports from the defense 9 side and review those to prepare your rebuttal?</p> <p>10 A. I did. 14:40:41</p> <p>11 Q. Okay. And I believe you rebutted both Jennifer 12 Moody and DT North. Correct?</p> <p>13 A. I did.</p> <p>14 Q. Okay. So would these notes, starting on page 46 of 15 Exhibit 6 through the end, relate to the work you 14:40:53 16 did to prepare your rebuttal report?</p> <p>17 A. I don't know. It looks like I'm talking to her in 18 more detail about her job search, so I don't see I 19 even used Moody's name or DT North's name, so --</p> <p>20 Q. Well, I guess the question is would there be any 14:41:12 21 reason other than to prepare your rebuttal and 22 supplemental report that you would be talking to 23 Dr. Bala about her job search starting on 24 November 28th?</p> <p>25 A. Right. You know, I don't know exactly, but it 14:41:25 Page 165</p>

42 (Pages 162 - 165)

<p>1 looks like I talked about PracticeLength here --</p> <p>2 Link here on page 51, so most likely I was asking</p> <p>3 her some questions regarding that.</p> <p>4 Q. Okay. I think the last question on the case notes.</p> <p>5 It's page 56, and the page number is a little -- 14:41:52</p> <p>6 it's off to the right. It's not at the bottom, and</p> <p>7 it's upside down. But it looks like there is --</p> <p>8 again, I think these are notes from a conversation</p> <p>9 you're having with Dr. Bala, and correct me if I'm</p> <p>10 wrong, but there is a number there that looks to 14:42:08</p> <p>11 be \$20 million maybe "from." Does that -- what is</p> <p>12 that number representing?</p> <p>13 A. I have no idea. Yeah, I have no idea what that</p> <p>14 was.</p> <p>15 Q. Well, I mean, you can look at the conversation 14:42:27</p> <p>16 around it. No idea why that number would be</p> <p>17 handwritten by you?</p> <p>18 A. No, I really don't.</p> <p>19 Q. Could it be that that's a number Dr. Bala shared</p> <p>20 with you that she was hoping to obtain in this 14:42:41</p> <p>21 lawsuit?</p> <p>22 A. Oh, gosh, no. She never -- she never did share</p> <p>23 with me any number she was hoping to attain. Not</p> <p>24 once. I don't know what that's there for. Yeah,</p> <p>25 the notes around it appear to be what her current 14:42:54</p> <p style="text-align: right;">Page 166</p>	<p>1 Q. When did you have conversations with Ms. Ostrofe?</p> <p>2 A. I had conversations with her when I sent her my</p> <p>3 report and she looked at it, the initial report,</p> <p>4 and wanted clarification on what my thoughts were</p> <p>5 regarding Dr. Bala's experience and trajectory. 14:44:12</p> <p>6 Q. Did you ever share a draft of your initial report</p> <p>7 with Ms. -- is it Ostrofe? Did you ever share a</p> <p>8 draft or just a final?</p> <p>9 A. Good question. My reports were -- if I had any,</p> <p>10 were shared with counsel. 14:44:37</p> <p>11 Q. Yeah, and I don't -- so apart from that, which is</p> <p>12 fine. We share reports with counsel, but I'm just</p> <p>13 curious about your sharing directly with</p> <p>14 Ms. Ostrofe.</p> <p>15 A. No. 14:44:49</p> <p>16 Q. Did you ever send her a draft report?</p> <p>17 A. No.</p> <p>18 Q. Who else was on the call, if anyone, when you</p> <p>19 talked to her about your report?</p> <p>20 A. Just her. 14:44:57</p> <p>21 Q. Okay.</p> <p>22 A. I'm not sure if you were ever on a call. I don't</p> <p>23 remember.</p> <p>24 Q. Okay. And what do you remember about that</p> <p>25 conversation with Ms. Ostrofe? 14:45:06</p> <p style="text-align: right;">Page 168</p>
<p>1 situation is at Citrus and where she lives and her</p> <p>2 dissatisfaction with the fact that she lives in a</p> <p>3 small area in Florida.</p> <p>4 Q. Okay. Separate question. At any time since your</p> <p>5 engagement through the present, have you had 14:43:16</p> <p>6 conversations with any of the other experts</p> <p>7 designated or disclosed by plaintiff?</p> <p>8 A. No.</p> <p>9 Q. Have you ever met or talked with Ms. Ostrofe?</p> <p>10 A. That, yes. Is that what you meant? 14:43:30</p> <p>11 Q. Yeah.</p> <p>12 A. I'm sorry.</p> <p>13 Q. That's okay. I'll reask that.</p> <p>14 A. Yes.</p> <p>15 Q. Have you had conversations with any of plaintiff's 14:43:35</p> <p>16 other designated experts?</p> <p>17 A. No, just --</p> <p>18 Q. I don't mean to trick you. I will represent to you</p> <p>19 that Ms. Nora Ostrofe is a disclosed testifying</p> <p>20 expert for -- 14:43:50</p> <p>21 A. Yes.</p> <p>22 Q. -- Dr. Bala.</p> <p>23 A. And I did talk with her --</p> <p>24 Q. Okay.</p> <p>25 A. -- a few times, yes. 14:43:55</p> <p style="text-align: right;">Page 167</p>	<p>1 A. Like I said, she just wanted clarification of</p> <p>2 where -- you know, I highlighted numbers so that it</p> <p>3 would be easy for the economist to pick the numbers</p> <p>4 out that I highlighted on the -- on the report, and</p> <p>5 so it was generally around, you know, was your 14:45:30</p> <p>6 expectation that Dr. Bala would continue on as an</p> <p>7 associate professor, and how long would that be</p> <p>8 until she reached a higher level of professor? How</p> <p>9 long would that be until chief? And it was more</p> <p>10 clarification because I thought it was fairly clear 14:45:49</p> <p>11 in my report, so -- so basically that was, I think,</p> <p>12 the extent of our conversations.</p> <p>13 Q. And when you say highlighted the numbers sort of</p> <p>14 for the ease of the economist use, I don't -- at</p> <p>15 least the copy we have of your report does not have 14:46:08</p> <p>16 highlighted numbers. It has some bolded numbers.</p> <p>17 A. Well, bolded. Bolded.</p> <p>18 Q. Okay.</p> <p>19 A. That's highlighted.</p> <p>20 Q. I just want -- well, they're two different things 14:46:17</p> <p>21 to me. I want to make sure I know what you're</p> <p>22 talking about.</p> <p>23 A. Not to me.</p> <p>24 Q. After your conversation with Ms. Ostrofe, did you</p> <p>25 change any numbers in your report or any of your 14:46:27</p> <p style="text-align: right;">Page 169</p>

43 (Pages 166 - 169)

<p>1 analysis?</p> <p>2 A. I did not. I did not change any of my numbers.</p> <p>3 Q. Okay. And so do you recall this being one or</p> <p>4 multiple conversations that you've had with</p> <p>5 Ms. Ostrofe since you've been engaged? 14:46:36</p> <p>6 A. I think only a couple. I don't think I've talked</p> <p>7 to her very much at all.</p> <p>8 Q. Did you take any notes from those conversations?</p> <p>9 A. Probably.</p> <p>10 Q. Okay. Where would those be if not in your case 14:46:50</p> <p>11 file?</p> <p>12 A. In my -- probably my billing file.</p> <p>13 Q. Is your billing file separate from your -- separate</p> <p>14 from what we looked at in Exhibit 6?</p> <p>15 A. Yes. 14:47:02</p> <p>16 Q. What else is in your billing file?</p> <p>17 A. Good question. My billing. My discussions with</p> <p>18 counsel.</p> <p>19 THE WITNESS: And I was looking for a Kleenex</p> <p>20 because my nose is dripping. It's probably in my 14:47:14</p> <p>21 pocket. I'm sorry.</p> <p>22 MS. BAUMGART: That's fine.</p> <p>23 THE WITNESS: There we go.</p> <p>24 Q. BY MS. BAUMGART: Okay. So I want to stick with</p> <p>25 the file. You're aware that we had issued -- you 14:47:32</p> <p style="text-align: right;">Page 170</p>	<p>1 preparing your rebuttal report? Did you consult</p> <p>2 with Ms. Ostrofe at all?</p> <p>3 A. No.</p> <p>4 Q. Other than speak with Ms. Ostrofe, have you ever</p> <p>5 talked with Dr. Glick or Dr. Carnes? 14:49:18</p> <p>6 A. Oh, no. And I did talk with Ms. Ostrofe a week</p> <p>7 ago.</p> <p>8 Q. What was the nature of that conversation?</p> <p>9 A. She called me and just wanted clarity again, were</p> <p>10 you saying this? And I just want to be sure. And 14:49:33</p> <p>11 I said, that's what I was saying, so --</p> <p>12 Q. What was she asking for clarity on?</p> <p>13 A. Good question. It would be -- I don't know. It</p> <p>14 was on one of my figures.</p> <p>15 Q. One of your -- 14:49:49</p> <p>16 A. Yeah.</p> <p>17 Q. So figures meaning probably something looking at</p> <p>18 page 18 through the end of your report?</p> <p>19 A. Yeah. It was -- I don't know if it was on private</p> <p>20 or was on the academic side. I really can't 14:50:00</p> <p>21 remember, but it was another question regarding</p> <p>22 your -- you say here that it's, you know, five</p> <p>23 years you're going to -- five -- five to eight</p> <p>24 years, whatever, that she would be earning this.</p> <p>25 And I just said, yes, that's what my opinion is. 14:50:16</p> <p style="text-align: right;">Page 172</p>
<p>1 had received what's called a subpoena duces tecum</p> <p>2 from our office, asking for your entire file, so if</p> <p>3 there is things I haven't gotten, I'm just asking</p> <p>4 about them. So I don't think we got your billing</p> <p>5 file. So what, to the best of your recollection, 14:47:44</p> <p>6 is in your billing file?</p> <p>7 A. Well, all my contacts with counsel, contacts</p> <p>8 probably with Nora. Sometimes you're working so</p> <p>9 fast you forget to write something down. Maybe</p> <p>10 that report you want from the link serve. 14:48:07</p> <p>11 Q. Anything else you can think of?</p> <p>12 A. I can't think of anything else.</p> <p>13 Q. So it sounds like your reference just now that the</p> <p>14 report from link serve may be in there, that there</p> <p>15 may be things in your billing file, as you call it, 14:48:33</p> <p>16 that incorporate or include or comprise facts or</p> <p>17 data that you may have relied upon in your analysis</p> <p>18 and conclusions. Is that right?</p> <p>19 A. Maybe.</p> <p>20 Q. Okay. Do you remember anything else from your 14:48:48</p> <p>21 conversations with Ms. Ostrofe that we haven't</p> <p>22 discussed?</p> <p>23 A. No. She mainly wanted clarity --</p> <p>24 Q. Okay. Did you have any conversations with her</p> <p>25 after reports were exchanged in the context of 14:49:07</p> <p style="text-align: right;">Page 171</p>	<p>1 I'm not going to change that.</p> <p>2 Q. Was she asking -- did she reference, for example,</p> <p>3 one of defendant's experts report? I mean, was she</p> <p>4 asking you if you were going to change your opinion</p> <p>5 or -- 14:50:33</p> <p>6 A. Oh, no. She didn't reference any of that.</p> <p>7 Q. Okay.</p> <p>8 A. No.</p> <p>9 Q. I guess I'm a little confused why she was --</p> <p>10 because she had already done her report, right? I 14:50:38</p> <p>11 mean, her report was done. Why is she calling you</p> <p>12 a week ago to ask you for clarity about your</p> <p>13 opinions? And I know you're not -- what is she</p> <p>14 sharing with you?</p> <p>15 A. I didn't have the report in front of me. I 14:50:49</p> <p>16 just -- I was -- I don't even remember if I was at</p> <p>17 my office. It was -- it was essentially just I</p> <p>18 just want to be clear that this is what you were</p> <p>19 asking because that was it, you know. That's how I</p> <p>20 formulated my opinion, so I think she said that. I 14:51:08</p> <p>21 don't even remember.</p> <p>22 Q. Okay. And last --</p> <p>23 A. It was a very short conversation.</p> <p>24 Q. And what specifically she wanted clarity about,</p> <p>25 about how many years you were attributing to a 14:51:21</p> <p style="text-align: right;">Page 173</p>

44 (Pages 170 - 173)

<p>1 certain progression on the academic side, or what 2 is it that she was asking about?</p> <p>3 A. I think it was academic side, and it was -- now 4 that I kind of am remembering a little bit, it was 5 on -- did you mean she was going to stay -- this 14:51:32 6 was the question: Did you mean she was going to 7 stay at OHSU this whole time when you wrote your 8 opinion or at -- or in the job in general? And I 9 said, well, in that job in general. I mean, who 10 knows if she would stay at OHSU. I don't know. So 14:51:46 11 when I formed my opinions, it wasn't based on OHSU. 12 It was based on being an associate professor and 13 how long.</p> <p>14 Q. Any academic medical institution?</p> <p>15 A. Any academic institution, yes. 14:52:03</p> <p>16 Q. Okay. Any conversations with -- is it Mr. Glusman 17 or Gusman? Did you ever talk to him?</p> <p>18 A. (Indicating).</p> <p>19 MS. BAUMGART: Okay. All right. Why don't we 20 take five. 14:52:25 21 (RECESS 2:52 to 3:04)</p> <p>22 Q. BY MS. BAUMGART: Ms. Broten, we're back on the 23 record. Are you ready to continue?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Back to your report, page 5, please, which 15:04:10 Page 174</p>	<p>1 about Dr. Bala from the University of Pennsylvania 2 in the documents you reviewed?</p> <p>3 A. Well, are you talking about the student reviews?</p> <p>4 Q. Student and faculty.</p> <p>5 A. A couple of the student reviews. 15:05:52</p> <p>6 Q. Student and faculty I was asking you about.</p> <p>7 A. Right. I did review some of those, yes.</p> <p>8 Q. Some of what?</p> <p>9 A. The student reviews and the faculty reviews.</p> <p>10 Q. Okay. Did you review all of the documents 15:06:03 11 pertaining to Dr. Bala's employment at the 12 University of Pennsylvania that you were provided?</p> <p>13 A. I should have.</p> <p>14 Q. Okay.</p> <p>15 A. Early on. 15:06:15</p> <p>16 Q. And do you believe her -- do you differentiate 17 between your assessment of the student reviews 18 versus faculty reviews at OHSU and University of 19 Pennsylvania?</p> <p>20 A. If you're meaning some of the reviews were not as 15:06:30 21 positive, yes, I did differentiate.</p> <p>22 Q. Okay. And is that why you didn't mention the 23 faculty reviews because they weren't as positive?</p> <p>24 A. No. Actually, I thought the faculty reviews were 25 fairly positive. 15:06:52 Page 176</p>
<p>1 is Exhibit 1, and I want to direct your attention 2 to the -- what is the first full paragraph that 3 starts with "Dr. Bala has testified to" and direct 4 your attention to that second sentence where you 5 write, "Her student reviews with OHSU and at the 15:04:33 6 University of Pennsylvania have always been 7 exemplary via examples in the file documents." Do 8 you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did you review -- in addition to student 15:04:45 11 reviews, did you review the faculty evaluations as 12 well in -- from her prior places of employment, 13 including OHSU and the University of Pennsylvania?</p> <p>14 A. I know I did for sure University of Pennsylvania, 15 and I'm sure I looked at OHSU as well. 15:05:06</p> <p>16 Q. Okay. And what was your impression from the 17 faculty evaluations about Dr. Bala from the 18 University of Pennsylvania? Were they exemplary as 19 well?</p> <p>20 A. Yeah, I thought they were very good. She, I think, 15:05:22 21 scored very good to exceptional -- was that the 22 right word that they used in a lot of the reviews? 23 Some were good, very good, exceptional. Some 24 were -- so yes.</p> <p>25 Q. Okay. And you don't remember any negative reviews 15:05:40 Page 175</p>	<p>1 Q. Okay. Including from the University of 2 Pennsylvania?</p> <p>3 A. Well, that's -- that's what I'm alluding to.</p> <p>4 Q. Okay.</p> <p>5 A. Not OHSU. 15:07:00 6 (Exhibit 15 marked)</p> <p>7 Q. BY MS. BAUMGART: Exhibit 15, I'll represent to 8 you, are faculty evaluation of Dr. Bala from the 9 University of Pennsylvania that were in your file 10 and that I believe you testified you've reviewed. 15:07:34 11 Correct?</p> <p>12 A. I'm sure I did.</p> <p>13 Q. Okay. Could you turn to the second page of 14 Exhibit 15, please, and the second -- I want to 15 start with the second paragraph that starts with 15:07:52 16 "Dr. Bala has been an attending physician for 8 17 months now." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And could you go ahead and read that out loud, 20 please. 15:08:13</p> <p>21 A. Dr. Bala has been an attending physician for eight 22 months now, and she is exhibiting a concerning 23 pattern of attitude and behavior. While she does 24 possess very good clinical judgment and does 25 clearly care about patients, she shows technical 15:08:30 Page 177</p>

45 (Pages 174 - 177)

<p>1 skills that are marginal at best, manifesting as a 2 severe lack of confidence and an extremely 3 defensive attitude, and her overall treatment of 4 the fellow trainees and lab staff can be best 5 summarized as rude, demeaning, condescending, 15:08:49 6 paranoid and aggressively defensive and 7 accusational with multiple episodes of grossly 8 unprofessional behavior. There are multiple 9 instances of her doing procedures without allowing 10 the fellow to even attempt any significant portions 15:09:07 11 of the case.</p> <p>12 Efforts to give tempered feedback to her have 13 been met with defensive accusations of arrogance on 14 our part without clear rationale. The degree of 15 antiprofessionalism is appalling, especially coming 15:09:24 16 from someone fresh out of training.</p> <p>17 Taken together, these signs suggest an insecure 18 physician who is becoming increasingly paranoid and 19 provocative, making our working and training 20 environment counterproductive and overall 15:09:41 21 uncomfortable. Unfortunately, her attitude and 22 behavior have only worsened as the year has 23 progressed, making it difficult to sympathize with 24 her even as new -- as a new attending. Personally 25 I feel that working with Dr. Bala in the EP lab 15:09:58 Page 178</p>	<p>1 exemplary or even positive? 2 A. Well, those statements, not -- no. 3 Q. Okay. And why didn't -- why weren't these type of 4 statements referenced in your report? 5 A. I don't -- I didn't think above all the other 15:11:42 6 statements they were as important. 7 Q. So you saw them and were aware of them and made a 8 conscious decision not to reference anything but 9 positive statements about Dr. Bala and positive 10 feedback from her time at the University of 15:12:01 11 Pennsylvania? 12 A. I was just making a conscious decision that it 13 was -- she had more positive contacts than -- or 14 statements rather than negative. 15 Q. But that's not what your report says. Your report 15:12:24 16 says unequivocal that at the University of 17 Pennsylvania have always -- her reviews with OHSU 18 and at the University of Pennsylvania have always 19 been exemplary. Do you still agree with that 20 statement, or are you changing your opinion about 15:12:44 21 that? 22 And you can continue look through. I'll 23 represent to you there is additional nonexemplary 24 feedback about Dr. Bala throughout Exhibit 15 that, 25 if, you know, you haven't seen it or need to 15:12:58 Page 180</p>
<p>1 provides little educational value and a lot of 2 aggravation. 3 Q. Okay. And then let's skip down to the last bullet 4 there that starts with "a persistent issue." Could 5 you read that, please. 15:10:14 6 A. "A persistent issue has been teaching at the 7 appropriate level." Lecture and material -- 8 "lecture material was consistently above the head 9 of the general fellows and went too fast to be able 10 to absorb in any meaningful way. needs to slow 15:10:28 11 down the pace and go over the basics which even 12 some of the EP fellows don't know." 13 Q. Okay. And then let's turn to the next page, which 14 is Bates-labeled 1526. Sort of the middle bullet, 15 third bullet down, I guess, or third paragraph 15:10:54 16 down, "Dr. Bala did less teaching." 17 A. You want me to read that? 18 Q. Sure. 19 A. Dr. Bala did less teaching than most attendings 20 I've seen. Her feedback to house staff went beyond 15:11:08 21 critical to nearly confrontational. She seemed 22 more interested in making people feel bad than 23 teaching them and helping them to learn. 24 Q. Okay. How would you characterize this feedback 25 about Dr. Bala? Would you characterize this as 15:11:30 Page 179</p>	<p>1 refresh your recollection, you're welcome to 2 review. But my question will be whether you're 3 maintaining your position that she has always 4 had -- always had exemplary reviews from the 5 University of Pennsylvania or if your opinion has 15:13:13 6 changed? 7 A. I would like to know what year these evaluations -- 8 was it in 2015? 9 Q. Why would the year matter? Because you don't 10 quantify a time in your unequivocal statement. 15:13:29 11 A. Because, when Dr. Bala first started, I don't 12 believe she had all the skills necessary to teach 13 and teach as -- teach in a way -- people learn to 14 do their job better as they do their job, and it 15 looked like this was from early on, if I'm not 15:13:52 16 mistaken. 17 Q. I think it's right before she left. It's her last 18 year. I'll represent to you it's the bottom. 19 It's 2015. It's her last year. 20 A. Oh, it is 2015. Okay. I just wanted to make sure 15:14:05 21 that that was the date. I think Dr. Bala's -- my 22 opinion would be that Dr. Bala had excellent 23 reviews, even exemplary reviews, excellent 24 recommendations from colleagues, and there are some 25 statements from either students or faculty. I'm 15:14:37 Page 181</p>

46 (Pages 178 - 181)

<p>1 not sure who did this. Was this done by students?</p> <p>2 Because I saw different reviews that were the</p> <p>3 check-the-box kind of thing from students. And I</p> <p>4 haven't looked at this close -- close for a couple</p> <p>5 months. 15:15:05</p> <p>6 Q. My question is do you stand by your opinion that</p> <p>7 Dr. Bala has always received exemplary reviews</p> <p>8 while she was at the University of Pennsylvania, or</p> <p>9 is your opinion different?</p> <p>10 A. I could take out the word "always." 15:15:19</p> <p>11 Q. And would you also add that, in fact, she received</p> <p>12 some fairly negative feedback? Is that accurate</p> <p>13 for the trier of fact?</p> <p>14 A. She received some, few, in my opinion.</p> <p>15 Q. And why did you not include that in your report? 15:15:41</p> <p>16 Why were you just -- why not?</p> <p>17 Oh, okay. Would you consider reviews by</p> <p>18 students at the University of Pennsylvania noting</p> <p>19 Dr. Bala was, quote, rude and demeaning, quote,</p> <p>20 "rude, demeaning/condescending, paranoid, and 15:16:51</p> <p>21 aggressively defensive and accusational -- with</p> <p>22 multiple episodes of grossly unprofessional</p> <p>23 behavior," quote, ability to work in teams is</p> <p>24 limited, did you consider those to be exemplary</p> <p>25 feedback about Dr. Bala? 15:17:10</p> <p style="text-align: right;">Page 182</p>	<p>1 Q. And I understand. I mean, I've read them. There</p> <p>2 is positive feedback, but I'm just curious, and I</p> <p>3 just count -- my count -- and you're welcome to,</p> <p>4 you know -- in Exhibit 15 alone, 20 separate</p> <p>5 reviewers who don't have good things to say about 15:19:14</p> <p>6 Dr. Bala. Do you think that's insignificant?</p> <p>7 MR. BRISCHETTO: Objection. Assumes a fact not</p> <p>8 in evidence.</p> <p>9 Go ahead.</p> <p>10 THE WITNESS: Where is the 20? 15:19:35</p> <p>11 Q. BY MS. BAUMGART: Never mind. Same question. I</p> <p>12 assume the same approach you took because</p> <p>13 certainly, if you read the reports from student and</p> <p>14 faculty reviews from OHSU, you would see similar,</p> <p>15 some positive, some negative feedback about 15:19:49</p> <p>16 Dr. Bala. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And, in fact, is your recollection that some of</p> <p>19 these same -- some of the same feedback that we</p> <p>20 just looked at in the University of Pennsylvania 15:19:59</p> <p>21 with respect to her approach, some of the same</p> <p>22 words were, in fact, observed and reported by OHSU</p> <p>23 students and faculty as well. Correct?</p> <p>24 A. I believe so.</p> <p>25 Q. And similar -- 15:20:19</p> <p style="text-align: right;">Page 184</p>
<p>1 A. I would refer those as subjective viewpoints from</p> <p>2 students, and I don't know what their thinking is</p> <p>3 when they do an eval.</p> <p>4 Q. So you're only considering subject -- you would</p> <p>5 agree that all of the feedback may be subjective, 15:17:29</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. So you're fine considering the positive subjective</p> <p>9 feedback but discounted the negative subjective</p> <p>10 feedback? Was that how you approached your 15:17:40</p> <p>11 analysis of Dr. Bala's employment records from the</p> <p>12 University of Pennsylvania and OHSU?</p> <p>13 A. Well, when I reviewed some of them, if I remember</p> <p>14 correctly -- and I don't -- I'm trying to remember</p> <p>15 correctly. Out of 17 positive, there might be 2 15:17:53</p> <p>16 negative, including some of these that we're</p> <p>17 looking at. Out of an additional 16 or 17</p> <p>18 positive, 2 were -- 2 were negative. Or maybe 17</p> <p>19 total, 2 were negative. So when I look at it, I</p> <p>20 look at most of the reviews in most of the areas, 15:18:19</p> <p>21 and if I remember correctly, communication -- I</p> <p>22 don't remember the other two -- were marked lower</p> <p>23 and in the poor to less good, less very good</p> <p>24 category, but within those same student evals, some</p> <p>25 of them were very positive as well. 15:18:57</p> <p style="text-align: right;">Page 183</p>	<p>1 A. I'd have to look.</p> <p>2 Q. And similar at Banner, right? That there was some</p> <p>3 similar type of feedback from some colleagues, some</p> <p>4 fellow faculty, some students that described her in</p> <p>5 the same -- same sort of ways that we just looked 15:20:32</p> <p>6 at in Exhibit 15, right?</p> <p>7 A. I would have to look but most likely.</p> <p>8 Q. Okay. And none of that -- there is not one iota of</p> <p>9 reference to that anywhere in your report or</p> <p>10 rebuttal report, is there? 15:20:43</p> <p>11 A. No.</p> <p>12 Q. Back to page 5 of your report, Ms. Broten. The</p> <p>13 same paragraph I was asking you about but that</p> <p>14 first sentence, which is the first full paragraph</p> <p>15 that says "Dr. Bala has testified to and discussed 15:21:04</p> <p>16 in our interview her desire to have remained in</p> <p>17 Academic Medicine in teaching, research, and</p> <p>18 performing clinical work." Is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you stated that based on your discussion with 15:21:16</p> <p>21 her and then review of her deposition testimony.</p> <p>22 Is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Didn't she also state in her deposition testimony</p> <p>25 that she wouldn't be opposed to continuing in 15:21:28</p> <p style="text-align: right;">Page 185</p>

47 (Pages 182 - 185)

<p>1 private practice setting where she could work in</p> <p>2 high volume? Do you remember her saying that?</p> <p>3 A. I do.</p> <p>4 Q. Okay. And that doesn't appear anywhere in your</p> <p>5 report, does it? 15:21:41</p> <p>6 A. Because her -- when interviewing her, she basically</p> <p>7 said, my first choice is academic medicine.</p> <p>8 Q. Okay. But you also were aware from reviewing the</p> <p>9 record that, in fact, she had testified in her</p> <p>10 deposition that she also would be interested 15:21:55</p> <p>11 working in a high-volume private practice setting.</p> <p>12 Correct?</p> <p>13 A. Yeah, she actually said that to me, too, but it</p> <p>14 wasn't her first choice.</p> <p>15 Q. Okay. But you didn't -- even knowing if it wasn't 15:22:07</p> <p>16 her first choice, you did not factor that into your</p> <p>17 analysis at all, did you?</p> <p>18 A. Well, I did when I made the earning capacity</p> <p>19 because I looked at private practice.</p> <p>20 Q. Explain to me how you factored into your earning 15:22:25</p> <p>21 capacity analysis that she would pursue a career in</p> <p>22 private -- in a high-volume private practice</p> <p>23 setting. Where is that in your analysis?</p> <p>24 A. Well, I didn't say those words, but she is -- I</p> <p>25 did -- she was working in private practice when I 15:22:43</p> <p style="text-align: right;">Page 186</p>	<p>1 A. I believe Dr. Bala indicated to me that the</p> <p>2 colleague who introduced her to Banner mentioned</p> <p>3 it.</p> <p>4 Q. Who is that person?</p> <p>5 A. I don't know. I don't know his name. 15:24:59</p> <p>6 Q. Okay. So this --</p> <p>7 A. It was a gentleman.</p> <p>8 Q. Oh, sorry. I didn't mean to interrupt you. A</p> <p>9 gentleman?</p> <p>10 A. I believe so. 15:25:07</p> <p>11 Q. Okay. And you say Dr. Bala mentioned this to you</p> <p>12 in one of your conversations you had with her?</p> <p>13 A. Yes.</p> <p>14 Q. Did you do anything to independently verify the</p> <p>15 accuracy of that statement from Dr. Bala? 15:25:18</p> <p>16 A. No.</p> <p>17 Q. As part of your analysis, did you review Dr. Bala's</p> <p>18 termination letter from Banner?</p> <p>19 A. I did.</p> <p>20 Q. And what's your recollection as to why she was 15:25:35</p> <p>21 terminated?</p> <p>22 A. They -- I don't remember totally. In fact, I'm not</p> <p>23 even going to testify because I don't remember it.</p> <p>24 Q. So help me understand. You are evaluating in part</p> <p>25 Dr. Bala's employability earnings capacity. 15:25:54</p> <p style="text-align: right;">Page 188</p>
<p>1 interviewed her, so she was accepting of that.</p> <p>2 Q. But isn't your -- give me one second.</p> <p>3 All right. Back to your report at page 6,</p> <p>4 please. And this is -- you're just going through</p> <p>5 her employment history, and I want to look at the 15:23:40</p> <p>6 middle of the page when you're referring to her</p> <p>7 employment at Banner. Do you see that? She's</p> <p>8 associate professor of medicine, director of</p> <p>9 cardiac -- cardiac electrophysiology lab, Banner --</p> <p>10 University Medical Group at the University of 15:23:56</p> <p>11 Arizona.</p> <p>12 A. Yes.</p> <p>13 Q. You're aware she had employment there, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And I'm looking at the -- you're writing -- 15:24:00</p> <p>16 you say, "Terminated: Before returning from FMLA.</p> <p>17 The employer indicated knowledge of a</p> <p>18 discrimination lawsuit with OHSU (informally)." Do</p> <p>19 you see that?</p> <p>20 A. Yes, I do. 15:24:30</p> <p>21 Q. Okay. First of all, the second part of that, "The</p> <p>22 employer indicated knowledge of a discrimination</p> <p>23 lawsuit with OHSU (informally)," what do you mean</p> <p>24 by that? What's the facts or data that support</p> <p>25 that statement? 15:24:41</p> <p style="text-align: right;">Page 187</p>	<p>1 Correct?</p> <p>2 A. Yes.</p> <p>3 Q. You know through the course of your analysis that</p> <p>4 she was involuntarily fired from Banner Health.</p> <p>5 Correct? 15:26:09</p> <p>6 A. Yes.</p> <p>7 Q. How do you not know the reasons why she was fired?</p> <p>8 A. I probably do. I just don't remember --</p> <p>9 Q. All right.</p> <p>10 A. -- at this moment. 15:26:21</p> <p>11 (Exhibit 16 marked)</p> <p>12 THE REPORTER: Exhibit 16.</p> <p>13 THE WITNESS: Thank you.</p> <p>14 Q. BY MS. BAUMGART: Did you have occasion to review</p> <p>15 Exhibit 16 in your course of your analysis in 15:26:57</p> <p>16 forming your opinions, Ms. Broten?</p> <p>17 A. Yes, I did review it.</p> <p>18 Q. Why don't you take a look at the second paragraph</p> <p>19 and go ahead and read that out loud, please.</p> <p>20 A. The faculty practice plan has made the difficult 15:27:10</p> <p>21 decision to terminate your employment under</p> <p>22 Section 5.1 based on your problematic</p> <p>23 communications and interactions with staff and</p> <p>24 others, period. Oh, no period, comma, as well as</p> <p>25 your extremely low productivity, as indicated by 15:27:26</p> <p style="text-align: right;">Page 189</p>

48 (Pages 186 - 189)

<p>1 your wRVUs. Although these issues were brought to</p> <p>2 your attention in June of 2019, the faculty</p> <p>3 practice plan continued to receive staff complaints</p> <p>4 about your behavior after that time, and your</p> <p>5 productivity remained deficient. 15:27:46</p> <p>6 In an attempt to enable you to be successful,</p> <p>7 we offered you the services of a physician coach to</p> <p>8 address these issues, but you declined that offer.</p> <p>9 The faculty practice plan has now determined that</p> <p>10 it is in the best interest of staff, patients and 15:28:02</p> <p>11 organization to terminate this employment</p> <p>12 relationship.</p> <p>13 Q. Do you remember being aware of this when you were</p> <p>14 performing your analysis --</p> <p>15 A. Yes. 15:28:16</p> <p>16 Q. -- and rendering your opinion?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And the reference here to "problematic</p> <p>19 communications and interactions with staff and</p> <p>20 others" underlying Dr. Bala's termination from 15:28:25</p> <p>21 Banner, does that sound fairly similar to what we</p> <p>22 just talked about with certain feedback from peers</p> <p>23 at both University of Pennsylvania and OHSU?</p> <p>24 A. Yes.</p> <p>25 Q. You're aware that Dr. Bala received a documented 15:28:39</p> <p style="text-align: right;">Page 190</p>	<p>1 any care team member is seeking clarity and</p> <p>2 guidance, especially related to a clinical matter,</p> <p>3 your role includes respectful education and</p> <p>4 disciplined communication." You knew she got that</p> <p>5 feedback while at Banner? 15:30:32</p> <p>6 A. Yes.</p> <p>7 Q. She also was given a documented verbal discussion</p> <p>8 about her leadership. Do you see that in this</p> <p>9 document?</p> <p>10 A. Yes. 15:30:43</p> <p>11 Q. And the next page, her interaction with her</p> <p>12 trainees. "Feedback from learners has suggested</p> <p>13 interactions that are intimidating, contemptuous</p> <p>14 and not conducive to a positive learning</p> <p>15 environment." Do you see that? 15:31:05</p> <p>16 A. Yes.</p> <p>17 Q. And then finally she's given feedback about her</p> <p>18 productivity and her current RVUs not reflective of</p> <p>19 acceptable level given the time in her role. Do</p> <p>20 you see that? 15:31:21</p> <p>21 A. Yes.</p> <p>22 Q. So now we've talked about three different places of</p> <p>23 employment, Banner Health, OHSU and University of</p> <p>24 Pennsylvania, where numerous different colleagues,</p> <p>25 including students, have provided this sort of 15:31:42</p> <p style="text-align: right;">Page 192</p>
<p>1 verbal discussion while at Banner that predated her</p> <p>2 termination?</p> <p>3 A. Yes.</p> <p>4 Q. Did you review that in the course of your work?</p> <p>5 A. Probably. If it was in the file. 15:28:56</p> <p>6 (Exhibit 17 marked)</p> <p>7 THE WITNESS: Thank you.</p> <p>8 Q. BY MS. BAUMGART: Exhibit 17, I'll represent, is</p> <p>9 the documented verbal discussion issued to Dr. Bala</p> <p>10 during her employment at Banner Health. Does that 15:29:20</p> <p>11 look familiar?</p> <p>12 A. I -- I believe it -- I -- sure I looked at it early</p> <p>13 on.</p> <p>14 Q. Okay. You're welcome to refresh your recollection,</p> <p>15 but it looks like that this was addressing issues 15:29:33</p> <p>16 with respect to Dr. Bala's communication,</p> <p>17 communication style. Correct?</p> <p>18 A. Communication, yes.</p> <p>19 Q. The way in which she communicates, being dismissive</p> <p>20 and disrespectful. You were aware of that? 15:29:53</p> <p>21 A. Yes. I'm reading it now.</p> <p>22 Q. She's told that "feedback has been received from</p> <p>23 most areas in which you work, suggesting this</p> <p>24 communication style is pervasive and interfering</p> <p>25 with achieving excellence in your practice. When 15:30:18</p> <p style="text-align: right;">Page 191</p>	<p>1 feedback about Dr. Bala, about her communication</p> <p>2 style. Correct?</p> <p>3 MR. BRISCHETTO: Object to the form.</p> <p>4 Go ahead.</p> <p>5 Q. BY MS. BAUMGART: Yes? 15:31:53</p> <p>6 A. Did you answer for me?</p> <p>7 Q. No.</p> <p>8 A. No, I didn't -- I didn't say anything yet. I don't</p> <p>9 know if I agree with the word "numerous," but, yes,</p> <p>10 she has had subjective feedback that has not been 15:32:07</p> <p>11 positive.</p> <p>12 Q. And you knew that at the time you were performing</p> <p>13 your assessment and rendering your ultimate expert</p> <p>14 opinions. Correct?</p> <p>15 A. Yes. 15:32:23</p> <p>16 Q. Do you view this as any sort of pattern of behavior</p> <p>17 by Dr. Bala at three different institutions?</p> <p>18 A. I would like to compare that with other doctors who</p> <p>19 have these types of reviews that seem more</p> <p>20 subjective than objective. 15:32:48</p> <p>21 Q. Well, other doctors aren't plaintiffs in this case,</p> <p>22 and you are not --</p> <p>23 A. I know.</p> <p>24 Q. -- retained to evaluate that. I'm just asking with</p> <p>25 respect to Dr. Bala, whose employment history you 15:33:00</p> <p style="text-align: right;">Page 193</p>

49 (Pages 190 - 193)

<p>1 were -- you reviewed as part of your expert 2 analysis and you were retained to and provided 3 opinion about her employability and barriers to her 4 employment, would this type of feedback about 5 Dr. Bala factor into your opinion about that there 15:33:20 6 may be barriers to her employment that you did not 7 mention in your report? 8 A. I guess, in my opinion, I don't consider these 9 negative barriers to her employment in a way that 10 would affect her getting a job necessarily. It 15:33:42 11 depends on the factors of the employer that is 12 going to hire her and whether or not they look at 13 these factors or have access to these factors. 14 Q. Apart from the negative feedback that we've talked 15 about that Dr. Bala received while at University of 15:34:05 16 Pennsylvania, OHSU and Banner Health -- and these 17 are -- this is documents you reviewed in the course 18 of your work. Correct? 19 A. Yes. 20 Q. We know that she was terminated -- you know that 15:34:19 21 she was terminated involuntarily from Banner 22 Health. Correct? 23 A. Yes. 24 Q. And you knew that at the time you undertook your 25 analysis and rendered your opinions. Correct? 15:34:31 Page 194</p>	<p>1 opinion -- 2 A. Yes. 3 Q. -- what barriers might there be? And I think the 4 barrier you're focused on, which we'll talk about 5 in a minute, are alleged references from OHSU and 15:36:21 6 the nonrenewal of the contract from OHSU. Correct? 7 A. Yes. 8 Q. You opined that those were barriers to Dr. Bala's 9 future employability and earning capacity. Yes? 10 A. Yes. 15:36:33 11 Q. Okay. So putting that aside, which we'll get to in 12 a moment, my question for you is was the fact that 13 Dr. Bala was fired from Banner Health a barrier to 14 her future employability and earning capacity? 15 A. It could have been, depending on where she applied. 15:36:45 16 Q. I don't understand your answer. 17 A. Okay. 18 Q. How can a nonrenewal of a contract -- so you 19 don't -- your answer is it could be; you don't 20 know? 15:37:07 21 A. It could be depending on the -- depending on how 22 she talks about Banner Health in her interview 23 processes. 24 Q. Wouldn't that be the same for how she talks about 25 anything, how she talks about a nonrenewal of a 15:37:23 Page 196</p>
<p>1 A. Yes. 2 Q. Yes or no, Ms. Broten, is her termination from 3 Banner Health a barrier to her future employment 4 and earning capacity? 5 A. I did not factor that in with high regard. 15:34:46 6 Q. I don't think that answered my question. My 7 question was is it -- not whether you factored it 8 in. We'll get to that in a minute because you 9 didn't, at least in your report. My question is is 10 the fact that Dr. Bala was involuntarily terminated 15:35:02 11 from Banner Health after she was not renewed from 12 OHSU, was that involuntarily termination a barrier 13 to her employability or future earning capacity? 14 A. I didn't consider that a barrier. 15 Q. Separate question whether you considered it. Is it 15:35:26 16 a barrier, in your expert opinion, someone such as 17 Dr. Bala being fired from a job, a barrier to her 18 future employability and earning capacity? 19 A. It could be. 20 Q. Is it in this situation? Is it a barrier for 15:35:49 21 Dr. Bala? 22 A. It also depends on the employers that are looking 23 at her record, employment history record. 24 Q. That's not my question. My question is simply you 25 were evaluating barriers. Correct? In your expert 15:36:10 Page 195</p>	<p>1 contract, how she talks about why she wants to move 2 to a different geographic region? I mean, isn't 3 that a -- I don't think that answers my question. 4 I don't want to think about how -- what a future 5 potential employer may ask, right? Simply looking 15:37:41 6 at the fact that there is a termination, that she 7 experiences a termination, in the period of time 8 where you were evaluating barriers to her 9 employment and her future earning capacity, yes or 10 no, did you consider the Banner termination a 15:37:59 11 barrier? 12 A. It -- no. 13 Q. Why not? 14 A. And it was primarily because it was a without-cause 15 termination, and in my discussion with Dr. Bala 15:38:15 16 about this, she had been going through a very 17 difficult time. Her -- I believe it was during the 18 time her father was gravely ill, and she had asked 19 for -- from human resources, I believe, when she 20 got this and had this verbal discussion, a chance 15:38:42 21 to reply, from my recollection, and so I didn't 22 count it as a significant barrier to her 23 employability. 24 Q. Unless I'm misreading your report, I don't think 25 you characterize it as a barrier at all. So is 15:39:05 Page 197</p>

50 (Pages 194 - 197)

<p>1 your opinion -- what is your opinion about it?</p> <p>2 MR. BRISCHETTO: Object. Objection.</p> <p>3 Argumentative and asked and answered.</p> <p>4 Go ahead.</p> <p>5 Q. BY MS. BAUMGART: I don't mean to argue with you. 15:39:15</p> <p>6 I've read your -- read your report several times,</p> <p>7 specifically looking for your opinion as to the</p> <p>8 impact of her involuntarily termination from Banner</p> <p>9 Health on her future employability and earning</p> <p>10 capacity, and all I see are passing references in a 15:39:33</p> <p>11 couple places, there was a not-for-cause</p> <p>12 termination but no opinion as to whether or not</p> <p>13 that was any sort of barrier at all, so I don't --</p> <p>14 I don't see it in there. Is that consistent with</p> <p>15 your opinion? 15:39:53</p> <p>16 MR. BRISCHETTO: Objection. Argumentative and</p> <p>17 asked and answered.</p> <p>18 Go ahead.</p> <p>19 Q. BY MS. BAUMGART: Go ahead.</p> <p>20 A. I believe as -- my opinion is, as I think I already 15:39:58</p> <p>21 said, was that it may have had some impact on some</p> <p>22 jobs that she applied for, depending on how it was</p> <p>23 discussed in the interview.</p> <p>24 Q. So -- oh, excuse me. I didn't mean to interrupt</p> <p>25 you. Okay. So fair enough. So on that point, 15:40:24</p> <p style="text-align: right;">Page 198</p>	<p>1 Correct?</p> <p>2 A. Yes.</p> <p>3 Q. And do you have any data or facts at all what any</p> <p>4 prospective employer -- what information they</p> <p>5 obtained or didn't obtain from Banner Health about 15:41:50</p> <p>6 the circumstances of Dr. Bala's separation?</p> <p>7 A. No, I don't have any additional information.</p> <p>8 Q. So certainly you can envision a situation, given</p> <p>9 you've been doing this a very long time, right --</p> <p>10 you're familiar with prospective employers checking 15:42:10</p> <p>11 references and calling. It's quite possible, isn't</p> <p>12 it, that, if an employer called Banner and asked</p> <p>13 them why Dr. Bala was no longer working with them</p> <p>14 and they shared with the prospective employer the</p> <p>15 circumstances that we talked about in the 15:42:29</p> <p>16 termination letter or in the discussion, the</p> <p>17 discussion note, that that could, in fact, be a</p> <p>18 barrier to her being hired, right?</p> <p>19 A. Well, there is certain protocols that need to -- I</p> <p>20 believe need to be followed by human resources, 15:42:44</p> <p>21 especially from a larger agency, that includes</p> <p>22 maybe a release from Dr. Bala to contact that</p> <p>23 agency or employer and if -- I can't imagine HR</p> <p>24 staff going in and picking out this and then start</p> <p>25 talking to another employer, prospective employer, 15:43:08</p> <p style="text-align: right;">Page 200</p>
<p>1 certainly if 1 of 202 of Dr. Bala's perspective</p> <p>2 employers called Banner and said, hey, why isn't</p> <p>3 Dr. Bala there anymore, and they share with her,</p> <p>4 she was a problem, we had communication problems,</p> <p>5 that could certainly be a barrier to her being 15:40:40</p> <p>6 hired, couldn't it?</p> <p>7 A. Well, I didn't see any of evidence in the file that</p> <p>8 said that Banner actually created any bad reviews</p> <p>9 on Dr. Bala, so if they're there, show me.</p> <p>10 Q. So my question wasn't about a written review. My 15:41:01</p> <p>11 question was --</p> <p>12 A. Verbal or written.</p> <p>13 Q. Let me ask my question.</p> <p>14 A. Sorry.</p> <p>15 Q. I just want you to think about this. So 15:41:10</p> <p>16 perspective, I think we've already established the</p> <p>17 number you worked from was that Dr. Bala applied</p> <p>18 for approximately 202 positions. Correct?</p> <p>19 A. Well, and that was over the course of --</p> <p>20 Q. Sure. So majority of them, can we agree, came 15:41:24</p> <p>21 after her termination from Banner?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I think there were about maybe 17-ish maybe</p> <p>24 that predated her employment at Banner, and so the</p> <p>25 vast majority were subsequent to her termination. 15:41:37</p> <p style="text-align: right;">Page 199</p>	<p>1 about Dr. Bala. I can't imagine that.</p> <p>2 So if there is information regarding that type</p> <p>3 of interaction from Banner to prospective employers</p> <p>4 or Dr. Bala did release a -- have a release</p> <p>5 statement that said Banner can tell them anything 15:43:36</p> <p>6 they want about Dr. Bala, then that would be</p> <p>7 considered a barrier, but I don't have that -- any</p> <p>8 evidence or documented statements about that in the</p> <p>9 file.</p> <p>10 Q. Right. The only documented statements you have in 15:43:55</p> <p>11 the file are pertaining to three occasions of</p> <p>12 purported negative references attributed to OHSU.</p> <p>13 Correct?</p> <p>14 A. I think there were three.</p> <p>15 Q. Right. And so of the 202 job applications, your 15:44:08</p> <p>16 opinion is it had to have been and only been those</p> <p>17 three purported negative references from OHSU</p> <p>18 in 2017 that were the barrier to Dr. Bala's future</p> <p>19 employability and earning capacity. Is that</p> <p>20 correct? 15:44:35</p> <p>21 A. Yes.</p> <p>22 Q. You understood that Dr. Bala was not terminated</p> <p>23 from OHSU, right?</p> <p>24 A. Yes. She resigned.</p> <p>25 Q. You knew that they gave her a year of notice of a 15:45:15</p> <p style="text-align: right;">Page 201</p>

51 (Pages 198 - 201)

<p>1 contract nonrenewal. Correct?</p> <p>2 A. I knew about that, yes.</p> <p>3 MS. BAUMGART: Can we take a quick break?</p> <p>4 MR. BRISCHETTO: Sure.</p> <p>5 (RECESS 3:46 to 3:55) 15:46:23</p> <p>6 Q. BY MS. BAUMGART: Ms. Broten, we're back on the</p> <p>7 record. Could I have you look back at Exhibit 15,</p> <p>8 please, which was the University of Pennsylvania</p> <p>9 documentation.</p> <p>10 A. It says 15 and 23. 15:56:11</p> <p>11 Q. Oh, it's a little confusing. That's it. It has a</p> <p>12 deposition -- the 23 is a deposition --</p> <p>13 A. Oh, okay.</p> <p>14 Q. -- or a trial court exhibit and then -- not</p> <p>15 deposition, excuse me, trial court exhibit but 15:56:22</p> <p>16 the -- maybe deposition exhibit. 15 is it. You</p> <p>17 have it? Okay.</p> <p>18 A. Yes.</p> <p>19 Q. So could I have you turn -- the Bates label on the</p> <p>20 bottom right hand, it's page 1527, please. Okay. 15:56:31</p> <p>21 So I have a couple questions, and then I want to</p> <p>22 direct your attention to something on this page.</p> <p>23 So you -- and we can look at your report if you</p> <p>24 want to, but my recollection is that in your report</p> <p>25 you pointed out that Dr. Bala as an 15:56:53</p> <p style="text-align: right;">Page 202</p>	<p>1 A. Yes. It appears, yes.</p> <p>2 Q. So if one of the 202 prospective employers Dr. Bala</p> <p>3 applied to were to have connected with this</p> <p>4 reviewer, this student or this faculty member, and</p> <p>5 learned about this feedback, this person's 15:58:37</p> <p>6 experience with Dr. Bala and opinion about patient</p> <p>7 safety concerns, certainly you would agree that</p> <p>8 could be a barrier to her future employment or</p> <p>9 earning capacity. Correct?</p> <p>10 A. Well, I'm confused how a future employer would get 15:58:51</p> <p>11 this information.</p> <p>12 Q. That wasn't my question, Ms. Broten. I'm not</p> <p>13 asking how a future employer. I'm just asking if a</p> <p>14 future employer -- there were 202 allegedly of</p> <p>15 them, right? 15:59:07</p> <p>16 A. Yes.</p> <p>17 Q. Okay. If a future employer were to know the</p> <p>18 student -- it's a small community -- know this</p> <p>19 faculty member, hear this feedback about Dr. Bala,</p> <p>20 you agree that that could be a barrier to her 15:59:22</p> <p>21 future employability or earning capacity. Correct?</p> <p>22 A. It might be one point in that.</p> <p>23 Q. It might be a barrier?</p> <p>24 A. It might be.</p> <p>25 Q. Okay. Back to your report. I want to ask you -- I 15:59:35</p> <p style="text-align: right;">Page 204</p>
<p>1 electrophysiologist works -- is a small community</p> <p>2 of professionals, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you also opined, as we talked about</p> <p>5 today, about the barriers or potential barriers to 15:57:07</p> <p>6 Dr. Bala's employability and earning capacity after</p> <p>7 leaving OHSU. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If I could have you read aloud that bullet</p> <p>10 point that starts "It is a bit confusing." 15:57:22</p> <p>11 A. "It is a bit confusing why this attending is</p> <p>12 allowed to teach fellows. She is clearly not</p> <p>13 comfortable with the depth of her own skill set</p> <p>14 during procedures." She -- oh, "Her unpredictable</p> <p>15 behavior, and inability to control her temper 15:57:40</p> <p>16 during procedures, results in staff and fellow</p> <p>17 spending more time worried" about their -- "about</p> <p>18 her behavior and less time focused on the patient.</p> <p>19 The result is the staff is more concerned about</p> <p>20 being chastised by Dr. Bala and less concerned 15:57:57</p> <p>21 about the patient. This clearly results in a</p> <p>22 dangerous situation for the patient."</p> <p>23 Q. Okay. So this particular individual --</p> <p>24 individual's feedback also touches on patient</p> <p>25 safety. Correct? 15:58:16</p> <p style="text-align: right;">Page 203</p>	<p>1 think we're going to go to pages -- at the end</p> <p>2 where you have your calculations, starting on</p> <p>3 page 18. This is your earning capacity assessment</p> <p>4 of Dr. Bala. Correct?</p> <p>5 A. Yes. 16:00:13</p> <p>6 Q. So let's go to page 19. I'm going to ask you how</p> <p>7 you reached some of your economic conclusions. So</p> <p>8 the first bolded sentence on page 19, you write,</p> <p>9 her loss of income at the professor rank 245,216</p> <p>10 annually, et cetera. How did you arrive -- let's 16:01:03</p> <p>11 pause there at the \$245,000 number. How did you</p> <p>12 arrive at that number?</p> <p>13 A. Let me read. There is -- there is calculations</p> <p>14 that I had to do.</p> <p>15 So what I did was attempt to discern what her 16:02:02</p> <p>16 level of income would be if she were to be raised</p> <p>17 to the rank of professor within five to eight</p> <p>18 years -- and I'm going by the above paragraph of</p> <p>19 the one that you alluded to in bold -- and as an</p> <p>20 associate professor and then the level of time it 16:02:32</p> <p>21 would take for her to work in that role before she</p> <p>22 might -- and I think I always used "may" or "may be</p> <p>23 able to" -- raise her rank within a certain age</p> <p>24 frame.</p> <p>25 And in this case, I used the figures for 16:02:58</p> <p style="text-align: right;">Page 205</p>

52 (Pages 202 - 205)

<p>1 SullivanCotter and AM -- AAMC, and I took the</p> <p>2 figure of 559,641, which is the wage at the 75th</p> <p>3 percentile -- find it here -- which you can see on</p> <p>4 the graph on page 18, and I used that wage because</p> <p>5 I made the decision that that is what her wage 16:03:44</p> <p>6 would be if she were to have worked 6.5 more years.</p> <p>7 Then up to the average that was listed in</p> <p>8 SullivanCotter, and I just took the two figures. I</p> <p>9 didn't just take the 75th percentile because that</p> <p>10 to me appeared to be quite high. And -- and then 16:04:15</p> <p>11 she would work, and the loss of income would be the</p> <p>12 loss between -- I believe it was the average of the</p> <p>13 two minus the 559 at 245,216. I wish I could look</p> <p>14 at my notes. So -- and then multiply that by</p> <p>15 the 1 million -- or by five years to reach 16:04:58</p> <p>16 the 1,226,000.</p> <p>17 Q. Okay. So the last part of that, Ms. Broten, five</p> <p>18 years, you just multiplied it by five, assuming she</p> <p>19 would stay at the same, would have made the same</p> <p>20 income for five years? 16:05:17</p> <p>21 A. Yes.</p> <p>22 Q. You just said --</p> <p>23 A. I believe so.</p> <p>24 Q. Oh, excuse me. Yes, you believe so?</p> <p>25 A. Yeah. 16:05:24</p> <p style="text-align: right;">Page 206</p>	<p>1 A. No.</p> <p>2 Q. -- do them?</p> <p>3 A. I just did them on little stickies and pasted them</p> <p>4 on my -- on my billing sheets.</p> <p>5 Q. Okay. So those are on your billing sheets, too? 16:06:32</p> <p>6 A. Yeah.</p> <p>7 Q. And when you -- did you send Ms. Ostrofe any of</p> <p>8 your work, if you will, your calculations, or did</p> <p>9 she just get the report?</p> <p>10 A. She just got the report. 16:06:45</p> <p>11 Q. Okay.</p> <p>12 A. I'm assuming that's what the attorneys sent to her.</p> <p>13 Q. Got it. And then how did you arrive at that --</p> <p>14 sticking with that same portion on page 19, if she</p> <p>15 were to remain a professor and not rise to the 16:07:02</p> <p>16 ranks of chief, her loss is that \$4.7 million, how</p> <p>17 did you get to that number?</p> <p>18 A. Essentially it was the same formula that I had used</p> <p>19 on the other paragraph above, so it was just a</p> <p>20 number of years, and I think that average -- let's 16:07:25</p> <p>21 see. Chief. I averaged two numbers together. I</p> <p>22 believe it was the mean and the 75th percentile.</p> <p>23 Q. Anything else?</p> <p>24 A. No, I don't believe so.</p> <p>25 Q. Does this \$4.7 million number you calculated take 16:07:59</p> <p style="text-align: right;">Page 208</p>
<p>1 Q. You just mentioned you wish you had your notes.</p> <p>2 What notes are you referring to?</p> <p>3 A. Well, just some of my calculation notes, which</p> <p>4 nobody would understand probably except myself.</p> <p>5 Q. But those are part of your file? 16:05:33</p> <p>6 A. (Indicating.)</p> <p>7 Q. Okay. We did not get those either, so we have some</p> <p>8 things we still need from your file.</p> <p>9 A. Sure.</p> <p>10 Q. Is there anything else from your file other than 16:05:43</p> <p>11 your billing file, notes, really important notes</p> <p>12 that you used to prepare your ultimate</p> <p>13 calculations -- anything else from your file that</p> <p>14 didn't get provided to the lawyers?</p> <p>15 A. I don't believe so, but, you know, my file is kind 16:06:01</p> <p>16 of thick.</p> <p>17 Q. Okay. And did you bring that file with you today?</p> <p>18 A. No.</p> <p>19 Q. Okay. But you have it intact in your office?</p> <p>20 A. Yeah. It's in my office. 16:06:13</p> <p>21 Q. Okay. When you said your notes for the</p> <p>22 calculations, did you crunch these numbers via like</p> <p>23 an Excel spreadsheet?</p> <p>24 A. I wish.</p> <p>25 Q. How did you -- 16:06:23</p> <p style="text-align: right;">Page 207</p>	<p>1 into account any offset for earnings Dr. Bala has</p> <p>2 received since leaving OHSU?</p> <p>3 A. No, it did not.</p> <p>4 Q. Why not?</p> <p>5 A. I didn't put it in the calculations. I thought 16:08:12</p> <p>6 that was for the economist to do.</p> <p>7 Q. And then the next -- skipping down to the next</p> <p>8 paragraph, that's where you're making the</p> <p>9 assumption that Dr. Bala would achieve the rank of</p> <p>10 a chief, a division chief. Let me ask you: Did 16:08:35</p> <p>11 you do any independent research as to what it takes</p> <p>12 to attain the status of a division chief in a</p> <p>13 cardiology department at an academic medical</p> <p>14 institution?</p> <p>15 A. I did, and it's an arduous process, from what I 16:08:51</p> <p>16 reviewed.</p> <p>17 Q. What did you review to inform your opinion?</p> <p>18 A. That might have been -- I'm not sure. I thought</p> <p>19 there was something in the file documents that I</p> <p>20 received, but I couldn't pinpoint. I know there 16:09:13</p> <p>21 was one -- I reviewed the -- you know what I</p> <p>22 reviewed? I reviewed the statements from the</p> <p>23 residency peer-reviewed or peer report that</p> <p>24 Dr. Bala had put together, Exhibit 5, in terms of,</p> <p>25 you know, how many were chiefs, how many were 16:09:39</p> <p style="text-align: right;">Page 209</p>

53 (Pages 206 - 209)

<p>1 professors, et cetera, and then I also reviewed --</p> <p>2 I believe it was one of the recommendation letters</p> <p>3 that -- I don't believe we talked about any of the</p> <p>4 referral or recommendation letters from other</p> <p>5 cardiology staff. His name was Lee -- no, Jai, 16:10:01</p> <p>6 J-A-I, and he made reference in his referral that</p> <p>7 he had lots of friends who became professors and</p> <p>8 even a couple of EPs that became chiefs, so that's</p> <p>9 mostly. And I think -- let's see. It seemed like</p> <p>10 there was something else I reviewed, but I don't -- 16:10:34</p> <p>11 I can't remember what it -- what it was. I</p> <p>12 apologize.</p> <p>13 Q. Okay. That's fine. So thank you for summarizing</p> <p>14 what you reviewed. Did you undertake any efforts</p> <p>15 to reach out and call OHSU or any other academic 16:10:44</p> <p>16 medical institutions?</p> <p>17 A. I usually do, but in terms of OHSU, I have called</p> <p>18 them many times in research scenarios. I just</p> <p>19 didn't feel it was good for me to do that.</p> <p>20 Q. Okay. You referenced -- was it Exhibit 6 that's 16:11:05</p> <p>21 Dr. Bala's residency?</p> <p>22 A. Where are we? Oh, great. 5.</p> <p>23 Q. 5. You just talked about Exhibit 5 that you relied</p> <p>24 on that to inform your opinion about potential</p> <p>25 progression by Dr. Bala to department -- or 16:11:30</p> <p style="text-align: right;">Page 210</p>	<p>1 inform your expert opinion?</p> <p>2 A. Oh, I see. I used this more for the professor, to</p> <p>3 reach professorship, not chief, so my apologies.</p> <p>4 Q. Okay. Back to your report. Still on page 19,</p> <p>5 Ms. Broten, the next analysis we started talking 16:13:29</p> <p>6 about, your evaluation of alleged loss earnings had</p> <p>7 Dr. Bala reached the rank of chief, and you say</p> <p>8 that there is -- you conclude that there was an</p> <p>9 average that she would earn about 700 -- are you</p> <p>10 with me? 16:13:51</p> <p>11 A. No. Where are you?</p> <p>12 Q. Sorry. Page 19.</p> <p>13 A. Page 19.</p> <p>14 Q. It's right where we were just looking. We looked</p> <p>15 at that first set of calculations. I just wanted 16:13:57</p> <p>16 to move down, so this --</p> <p>17 A. Okay.</p> <p>18 Q. -- this is, I guess, the second full paragraph of</p> <p>19 page 19, "This counselor documented rank of</p> <p>20 Chiefs," that paragraph. 16:14:08</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So I just want to ask you similar questions,</p> <p>23 how you arrived -- how did you get to that \$751,000</p> <p>24 number?</p> <p>25 A. Right. So that would have been taking the average 16:14:18</p> <p style="text-align: right;">Page 212</p>
<p>1 division, excuse me, chief. Is that correct?</p> <p>2 A. Right.</p> <p>3 Q. Are there any other EPs on this list?</p> <p>4 A. I don't know. I don't -- I need to look at it</p> <p>5 again. 16:11:46</p> <p>6 Q. And while you're looking at it, my other question,</p> <p>7 if we can kill two birds with one stone, is do any</p> <p>8 of these folks -- have any of them achieved the</p> <p>9 position of a chief?</p> <p>10 A. Looks like there is one on the second page. Oh, 16:11:58</p> <p>11 it's -- that's Rupa Bala. Sorry. It was</p> <p>12 highlighted. Somebody must have highlighted it.</p> <p>13 Maybe Rupa did. I'm not sure. There is one on</p> <p>14 page 3, Pai Rakesh, and they're not even -- they're</p> <p>15 a physician executive, so they're not working in 16:12:26</p> <p>16 the field necessarily.</p> <p>17 Q. Right. My question is is anyone on this list,</p> <p>18 Dr. Bala's -- I think her residency class of 1998.</p> <p>19 One, is any other EPs, and, two, has anyone</p> <p>20 attained the title of chief of their department? 16:12:44</p> <p>21 A. I don't -- I don't see that.</p> <p>22 Q. Okay. Then how did this inform your opinion as to</p> <p>23 what a progression to chief might look like for</p> <p>24 Dr. Bala, how one becomes a chief, what's</p> <p>25 involved -- how did this document, Exhibit 5, 16:13:02</p> <p style="text-align: right;">Page 211</p>	<p>1 between -- I used the chief mean and 75th</p> <p>2 percentile and used that and averaged those</p> <p>3 together, I believe.</p> <p>4 Q. Okay.</p> <p>5 A. Yes, that's what I believe I used. 16:14:43</p> <p>6 Q. And then it looks like you made the same assumption</p> <p>7 that she would be in the professor rank for five</p> <p>8 years and then work as a chief with a loss. Any</p> <p>9 clarity you can shine for me on your calculations</p> <p>10 in that -- 16:15:05</p> <p>11 A. Sure.</p> <p>12 Q. -- paragraph would be helpful, how you arrived at</p> <p>13 those numbers.</p> <p>14 A. So the 14.4 years was the leftover years from the</p> <p>15 day I determined she might become chief or the 16:15:16</p> <p>16 month I thought she might become chief to the date</p> <p>17 that she would retire at 70. And then -- and I</p> <p>18 only included that after her professor role, after</p> <p>19 she was in the professor role for five years.</p> <p>20 Q. And then similar approach. You assumed that, if 16:15:39</p> <p>21 she had achieved the chief role, she would have</p> <p>22 received the same salary for that 14-ish years?</p> <p>23 A. Right.</p> <p>24 Q. I think you referenced your calculations -- in</p> <p>25 reaching your calculations for both scenarios, both 16:16:04</p> <p style="text-align: right;">Page 213</p>

54 (Pages 210 - 213)

<p>1 the first one we talked about where Dr. Bala would</p> <p>2 achieve the professor rank and then just now where</p> <p>3 she would achieve the chief rank, I think you</p> <p>4 talked about you averaged the mean and the 75th</p> <p>5 percentile. Did I hear you correctly? 16:16:26</p> <p>6 A. I think that's what I did.</p> <p>7 Q. Why would you do that versus just use the mean?</p> <p>8 A. I think it was because the wages at the mean</p> <p>9 were -- I'm not -- I would have to go back to my</p> <p>10 notes, but I didn't want to use the 75th percentile 16:16:52</p> <p>11 although she would have had, in my opinion, the</p> <p>12 experience, knowledge, skills and abilities to do a</p> <p>13 chief role after so many years as a professor.</p> <p>14 Does that make sense? So, again, I didn't want to</p> <p>15 go the highest mark, and I didn't want to leave it 16:17:13</p> <p>16 at the mean or the average.</p> <p>17 Q. In making that determination, did you rely on any</p> <p>18 other study or methodology? You just arrived at</p> <p>19 this approach on your own?</p> <p>20 A. Well, I used the U.S. Bureau of Labor stats 16:17:34</p> <p>21 information on percentiles and mean and median</p> <p>22 wages, so in general terms.</p> <p>23 Q. I don't see those -- and point me if I'm missing</p> <p>24 something, Ms. Broten. I don't see any of those</p> <p>25 statistics or data reflected in the -- in that 16:17:56</p> <p style="text-align: right;">Page 214</p>	<p>1 testified, your explanation why you averaged the</p> <p>2 mean and the 75th percentile versus just using the</p> <p>3 mean, in making that specific decision that</p> <p>4 underlies your ultimate calculation we just talked</p> <p>5 about, did you rely on any specific methodology, 16:19:38</p> <p>6 report, survey --</p> <p>7 A. Right.</p> <p>8 Q. -- the like?</p> <p>9 A. Well, U.S. Bureau of Labor stats gives you</p> <p>10 information, as does the Oregon Employment 16:19:52</p> <p>11 Department, that says this is where a person can be</p> <p>12 expected to earn if they were in this job for this</p> <p>13 long and they obtained all the necessary skills and</p> <p>14 knowledge and abilities to do that job.</p> <p>15 Q. So that gives you some actual salary -- benchmark 16:20:08</p> <p>16 salary data?</p> <p>17 A. Yes.</p> <p>18 Q. And is that anywhere in your report or in your</p> <p>19 supporting documentation?</p> <p>20 A. The use of BLS? 16:20:17</p> <p>21 Q. Um-hum (affirmative response).</p> <p>22 A. No, I don't think so.</p> <p>23 Q. But it sounds like you used it to make the</p> <p>24 decision -- at least in part to make the decision</p> <p>25 to average the mean and the 75th percentile. Am I 16:20:30</p> <p style="text-align: right;">Page 216</p>
<p>1 chart.</p> <p>2 A. No. And it wouldn't be. Are you talking the</p> <p>3 BLS --</p> <p>4 Q. Right.</p> <p>5 A. -- that I just mentioned? It wouldn't be. It 16:18:04</p> <p>6 would be just how do you -- how do you determine a</p> <p>7 person's qualifications to be at one of those</p> <p>8 levels, and usually it's -- it can be number of</p> <p>9 years of experience along with education and skills</p> <p>10 in a profession, if that makes sense. I just do 16:18:34</p> <p>11 that all the time. I do that with Oregon</p> <p>12 employment wages. I do that with calculations of</p> <p>13 earning capacity, utilizing the state of Oregon BLS</p> <p>14 documentation that they use and transfer over to</p> <p>15 Oregon. I called BLS several times to ask them 16:18:54</p> <p>16 questions.</p> <p>17 Q. And that would -- if I understood what you were</p> <p>18 just saying, Ms. Broten, that may inform and be a</p> <p>19 consistent practice with sort of figuring out how</p> <p>20 many years it may take for one to progress. Is 16:19:08</p> <p>21 that what your testimony is?</p> <p>22 A. Yeah, that --</p> <p>23 Q. Okay.</p> <p>24 A. -- that would be relation -- would relate to that.</p> <p>25 Q. And I'm just wondering, other than what you 16:19:17</p> <p style="text-align: right;">Page 215</p>	<p>1 understanding that correctly?</p> <p>2 A. Well, it's standard for vocational counselors to</p> <p>3 utilize that documentation, so I didn't think I had</p> <p>4 to write it down.</p> <p>5 Q. I just asked if you used it or not. 16:20:44</p> <p>6 A. Oh, I did use it.</p> <p>7 Q. Okay. But you didn't write it down?</p> <p>8 A. Right.</p> <p>9 Q. Was there anything else you used other than what we</p> <p>10 see in your report and the BLS data that we don't 16:20:53</p> <p>11 see in your report to arrive at any of your</p> <p>12 calculations in your report?</p> <p>13 A. Nope.</p> <p>14 Q. Did you use the BLS data for all of your</p> <p>15 calculations or just -- just this -- these first 16:21:07</p> <p>16 two scenarios where Dr. Bala would achieve the rank</p> <p>17 of professor and then where she would achieve the</p> <p>18 rank of chief?</p> <p>19 A. So I think, you know, what you're talking about is</p> <p>20 just a definition of what the 10th percentile is, 16:21:23</p> <p>21 what the 25th percentile is, what the 50th</p> <p>22 percentile is, what the mean and so on and so</p> <p>23 forth. That is the information from BLS that I</p> <p>24 use. So I didn't put that in the report, but</p> <p>25 that's standard, you know, that we use as 16:21:41</p> <p style="text-align: right;">Page 217</p>

55 (Pages 214 - 217)

<p>1 vocational experts and vocational rehab counselors.</p> <p>2 Q. Right. And just so I understand that you used</p> <p>3 that -- you used that standard BLS information you</p> <p>4 just explained in reaching all of your calculations</p> <p>5 in your report? 16:22:01</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And my question was other than the BLS and</p> <p>8 the data we see within the four corners of the</p> <p>9 report, did you rely on any other information,</p> <p>10 methodology to complete your lost earning 16:22:15</p> <p>11 calculations?</p> <p>12 A. No.</p> <p>13 Q. You mentioned experience. What authority did you</p> <p>14 rely on to support your opinion that a physician's</p> <p>15 years of experience necessarily will result in 16:22:46</p> <p>16 higher levels of compensation? What authority do</p> <p>17 you have to support that?</p> <p>18 A. Well, basically I just utilized the BLS data that I</p> <p>19 referenced, that I have knowledge of and have used.</p> <p>20 Q. You didn't look into any -- whether or not that BLS 16:23:07</p> <p>21 data that you had knowledge of and have used many</p> <p>22 times actually supports how physicians are</p> <p>23 compensated as they progress in their careers?</p> <p>24 A. No.</p> <p>25 Q. If, in fact, that didn't ring true and a 16:23:24</p> <p style="text-align: right;">Page 218</p>	<p>1 because EP --</p> <p>2 Q. I just asked if it changed your opinion.</p> <p>3 A. Oh, sorry. No.</p> <p>4 Q. But you didn't submit a rebuttal to his report, did</p> <p>5 you? 16:25:14</p> <p>6 A. No.</p> <p>7 Q. Just to Jennifer Moody and DT North. Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And finally I think we have the table there, which</p> <p>10 is the Pinnacle table. What's your understanding 16:25:29</p> <p>11 of what data Pinnacle -- what Pinnacle -- what this</p> <p>12 Pinnacle Medical Group survey constitutes?</p> <p>13 A. Well, Pinnacle reported the survey from MGMA.</p> <p>14 Q. Okay.</p> <p>15 A. And I spoke with Pinnacle, the director of the 16:25:50</p> <p>16 physician recruiters, so essentially they just use</p> <p>17 MGMA --</p> <p>18 Q. Right.</p> <p>19 A. -- data.</p> <p>20 Q. Because they don't actually publish compensation 16:26:02</p> <p>21 surveys?</p> <p>22 A. No.</p> <p>23 Q. Right.</p> <p>24 A. But they're like any other. I think I talked about</p> <p>25 the university -- or Boston Medical University or 16:26:10</p> <p style="text-align: right;">Page 220</p>
<p>1 physicians, particularly a specialty physician like</p> <p>2 an electrophysiologist -- if the authority did not</p> <p>3 support that years of experience necessarily</p> <p>4 correlate to higher levels of compensation, would</p> <p>5 that change your opinion and your calculations? 16:23:46</p> <p>6 A. If I found data to support that perhaps, but</p> <p>7 generally speaking, as an individual in an</p> <p>8 occupation progresses, their wage progresses with</p> <p>9 that.</p> <p>10 Q. But you acknowledge that it may be different for 16:24:08</p> <p>11 physicians; you just don't know?</p> <p>12 A. Yeah, I doubt it is, but I don't know for sure.</p> <p>13 Q. I know you didn't rebut it directly. Did you</p> <p>14 review -- have you reviewed Mr. Henski's reports in</p> <p>15 this case? 16:24:28</p> <p>16 A. Yes, I did.</p> <p>17 Q. Does that change your opinion about how physicians,</p> <p>18 particularly specialty physicians like</p> <p>19 electrophysiologists, are compensated as they</p> <p>20 progress in their careers? 16:24:41</p> <p>21 A. No, it didn't change my opinion. I looked at the</p> <p>22 data that he wrote in his report. I didn't see</p> <p>23 supporting data. And I believe he was using MGMA</p> <p>24 stats of some sort, and he was also using the term</p> <p>25 "surgical specialist" rather than EP directly 16:25:01</p> <p style="text-align: right;">Page 219</p>	<p>1 Boston University Medical. They do the same. Many</p> <p>2 facilities do that.</p> <p>3 Q. And so this last -- on your final page of your</p> <p>4 report, Ms. Broten, this covers -- and I think your</p> <p>5 number is here. It's your final full paragraph. 16:26:48</p> <p>6 Those cover, I think -- correct me if I'm wrong --</p> <p>7 her -- Dr. Bala's wages at Citrus Cardiology. Is</p> <p>8 that right?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. Okay. And based on your testimony here today that, 16:27:06</p> <p>11 one, you didn't factor in the productivity portion</p> <p>12 of her contract with Citrus and the new information</p> <p>13 that perhaps there has been some change to her</p> <p>14 compensation structure, this number is no longer</p> <p>15 accurate. Is that right? 16:27:33</p> <p>16 A. You know, I need to go over it because it's so new.</p> <p>17 It may or may not change.</p> <p>18 Q. Right. We don't know, I think --</p> <p>19 A. We don't know.</p> <p>20 Q. And it may be, you know, that -- we looked briefly, 16:27:53</p> <p>21 and I'm happy to show you again. I think it's an</p> <p>22 exhibit, the final page of productivity of her</p> <p>23 contract. I mean, it may be that she could make</p> <p>24 more now. We just don't know, right?</p> <p>25 A. The productivity page to me when you asked was -- 16:28:08</p> <p style="text-align: right;">Page 221</p>

56 (Pages 218 - 221)

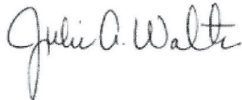
<p>1 it didn't apply at the time because she had a</p> <p>2 salary, but, yes, it could make a difference now.</p> <p>3 Q. Okay. So basically right now I think you said</p> <p>4 you'll need to look at it again, so, sitting here</p> <p>5 today, I think you'd agree that you can't state 16:28:28</p> <p>6 with any certainty how much she'll make this year,</p> <p>7 let alone in five years, let alone in fifteen</p> <p>8 years. Is that right?</p> <p>9 A. Not until I look at the documents and put it</p> <p>10 together. 16:28:42</p> <p>11 Q. Okay. I just want to introduce your rebuttal</p> <p>12 report. I don't have any questions about it, but I</p> <p>13 just want it to be part of the record.</p> <p>14 (Exhibit 18 marked)</p> <p>15 (Pause in proceedings) 16:29:21</p> <p>16 Q. BY MS. BAUMGART: Is Exhibit 18 your rebuttal</p> <p>17 report that you prepared, Ms. Broten?</p> <p>18 A. Yes.</p> <p>19 Q. Did anyone assist you in preparation of this</p> <p>20 report? 16:29:37</p> <p>21 A. Absolutely not.</p> <p>22 Q. At any point in your work on this matter, have you</p> <p>23 contacted anyone at Citrus directly?</p> <p>24 A. No.</p> <p>25 Q. Did you talk to Dr. Bala about the circumstances 16:30:04</p> <p style="text-align: right;">Page 222</p>	<p>1 Q. Sure. And the video was a videoconference?</p> <p>2 A. It was Zoom video, yes.</p> <p>3 Q. Zoom video.</p> <p>4 A. Most of it. I mean, you can only go 40 minutes. I</p> <p>5 don't have a contract with Zoom, so -- 16:31:46</p> <p>6 Q. I was wondering if that's why they were set in</p> <p>7 two 40-minute increments.</p> <p>8 A. I had to do two, and I think we did both.</p> <p>9 Q. All right. Just give me one second to look at my</p> <p>10 notes. 16:31:56</p> <p>11 MS. BAUMGART: I have no more questions. We</p> <p>12 will need to leave this open because we did not get</p> <p>13 the entirety of your file, so we'll work with</p> <p>14 counsel to get that, but otherwise we're done for</p> <p>15 today. Thank you. 16:32:51</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. BRISCHETTO: I do have two questions I want</p> <p>18 to ask you.</p> <p>19 MS. BAUMGART: Sorry.</p> <p>20 THE WITNESS: Sorry. 16:32:58</p> <p>21 EXAMINATION</p> <p>22 BY MR. BRISCHETTO:</p> <p>23 Q. And if you take out Exhibit 5 again, and you were</p> <p>24 asked questions about whether any of the</p> <p>25 individuals had achieved chief, and I want you to 16:33:16</p> <p style="text-align: right;">Page 224</p>
<p>1 underlying her termination from Banner?</p> <p>2 A. I believe we did touch on it, you know, her --</p> <p>3 yeah, I believe we touched on it.</p> <p>4 Q. And other than what you've stated in your report --</p> <p>5 I think you referenced a family medical leave, 16:30:40</p> <p>6 not-for-cause termination -- anything else you</p> <p>7 remember her sharing with you about the</p> <p>8 circumstances underlying her separation from Banner</p> <p>9 Health?</p> <p>10 A. I may have written in that one section about I know 16:30:52</p> <p>11 somebody talked with her about the court case.</p> <p>12 Q. Oh, well, she told you she may have heard that?</p> <p>13 A. She told me, yes.</p> <p>14 Q. Right.</p> <p>15 A. Yes. 16:31:06</p> <p>16 Q. You didn't have confirmation one way or the other.</p> <p>17 Correct?</p> <p>18 A. Right. Sorry.</p> <p>19 Q. Did you record your interviews with Dr. Bala?</p> <p>20 A. Oh, no. 16:31:16</p> <p>21 Q. Were they on video or on telephone?</p> <p>22 A. The first interview was on Zoom, not recorded. I'm</p> <p>23 not that technical. And the second one was a</p> <p>24 phone call that just turned into a longer</p> <p>25 conversation. 16:31:34</p> <p style="text-align: right;">Page 223</p>	<p>1 look at the third individual, Sumant Ranji, MD --</p> <p>2 A. Oh.</p> <p>3 Q. -- and go across to title. Do you see the title he</p> <p>4 has currently chief of the division of hospital</p> <p>5 medicine? 16:33:31</p> <p>6 A. I'm sorry, I missed that. It looks like I missed</p> <p>7 another one.</p> <p>8 Q. Yes. And I just wanted to make sure to ask you.</p> <p>9 Sounded like you didn't kind of look at the entire</p> <p>10 document and each entry. Correct? 16:33:49</p> <p>11 A. That's right.</p> <p>12 Q. All right. Thank you.</p> <p>13 MR. BRISCHETTO: Yes. And we aren't agreeing</p> <p>14 to leave the deposition open, but we do acknowledge</p> <p>15 defendant's statement. I have nothing else. 16:34:06</p> <p>16 MS. BAUMGART: And we'll take that up. I'm not</p> <p>17 surprised by your response, but we did not get a</p> <p>18 full responsive subpoena, so we'll have to talk</p> <p>19 about that and see if we need to agree to come back</p> <p>20 or where we go from there. 16:34:24</p> <p>21 MR. BRISCHETTO: We'll talk.</p> <p>22 MS. BAUMGART: Sounds good. All right. We're</p> <p>23 done with you.</p> <p>24 (Exhibit 19 marked)</p> <p>25 (DEPOSITION ADJOURNED at 4:34) 16:34:31</p> <p style="text-align: right;">Page 225</p>

57 (Pages 222 - 225)

1 CERTIFICATE

2
3 I, Julie A. Walter, CSR No. 90-0173, do hereby
4 certify that LISA BROTEN appeared before me at the
5 time and place mentioned in the caption herein;
6 that the witness was by me first duly sworn on oath
7 and examined upon oral interrogatories propounded
8 by counsel; that said examination together with the
9 testimony of said witness was taken down by me in
10 stenotype and thereafter reduced to typewriting;
11 and that the foregoing transcript, Pages 1 to 225,
12 both inclusive, constitutes a full, true and
13 accurate record of said examination of and
14 testimony given by said witness and of all other
15 proceedings had during the taking of said
16 deposition, and of the whole thereof, to the best
17 of my ability.

18 Witness my hand at Portland, Oregon, this 19th
19 day of January, 2024.

20 

21 Julie A. Walter
22 CSR No. 90-0173
23
24
25

Page 226

58 (Page 226)

[0 - 2:08]

0	151:7 152:17	205:3 206:4	201:15 204:2
0 137:11	158:19,25	222:14,16	204:14
00850 1:7	161:12	189 5:16	2020 4:17
1	12/14/23 5:20	19 5:22 205:6,8	2021 4:19
1 4:3 11:3,5,10	120 4:12	208:14 212:4	2022 4:21,23
11:10 51:13	122 4:14	212:12,13,19	5:1,3
52:3 66:21	123 4:16	225:24	2023 23:10,19
67:16 73:3	12:21 123:9	191 5:19	23:20 24:10
77:14 88:21	13 5:5 146:5,6	1998 4:15	34:8 164:25
123:19 175:1	146:11	122:7 211:18	2024 1:18 2:6
199:1 206:15	14 5:7 146:8	19th 226:18	6:8 226:19
226:11	151:14,15	1:36 123:9	212 67:5
1,000 105:10	152:14 213:22	2	215 67:5,6
1,226,000	14.4 213:14	2 4:5 69:5 70:5	218 57:16,23,25
206:16	144 4:17,19,21	70:7,12 75:3	58:4
1/17/20 5:16	4:23 5:1,3	75:13 77:14,25	219 57:8
10 4:23	146 5:5,7	82:23 134:24	22 152:21
10/20/2023	15 5:13 140:5	135:10 183:15	222 5:20
129:5	177:6,7,14	183:18,18,19	225 5:22
10/27/23 4:3	180:24 184:4	20 18:14,15,20	226:11
100 73:3 137:7	185:6 202:7,10	158:13 166:11	23 154:2
137:10	202:16	184:4,10	202:10,12
1000 2:20	1500 2:8,15,20	200 128:3	23rd 163:7
101 73:12	1526 179:14	2015 181:8,19	245,000 205:11
10:05 34:2	1527 202:20	181:20	245,216 205:9
10th 217:20	16 5:16 144:5,5	2017 32:12	206:13
11 4:3 5:1	145:1 183:17	201:18	25th 217:21
11:26 92:9	189:11,12,15	2018 19:12,16	26810 226:22
11:37 92:9	17 5:19 157:15	19:20,22,23	26c 34:25
12 5:3 139:4	183:15,17,18	58:1 67:10	27th 163:8
144:22 145:2	191:6,8 199:23	2019 58:7	28th 164:15,25
145:10,17	177 5:13	190:2	165:24
146:10,17,24	18 5:20 157:16	202 127:4,8,13	2:06 144:21
147:5,9 148:1	158:8,12	127:24 128:4,9	2:08 144:21
149:24 150:9	159:15 172:18	163:2 199:1,18	

[2:29 - aamc]

2:29 159:9 2:30 159:9 2:52 174:21 2s 87:4	121:22,25 125:23 4.7 208:16,25 40 12:21 14:9,9 17:25 45:17 46:17,18 65:12 65:13 128:25 129:6 130:20 134:18 163:6 224:4,7 41 163:6,6 42 164:10,13 43 164:13 45 126:17 46 164:13,14,24 165:14 48 160:15 4:34 225:25	559 206:13 559,641 206:2 56 166:5 58 123:19 5th 6:7 141:12 141:20,24 6 6 4:16 123:10 123:13 125:21 126:19 130:20 145:1 165:15 170:14 187:3 210:20 6.5 206:6 60 18:5,5,6 46:18 65 14:10 7 7 4:17 125:23 144:22 145:2 145:10,17 146:10,17,23 147:5,9 148:1 149:24 150:9 151:7,7 152:16 158:18,24 161:11 70 4:5,11 213:17 700 212:9 72 66:7 751,000 212:23 75th 158:6 159:4 206:2,9	208:22 213:1 214:4,10 216:2 216:25 760 3:6 8 8 4:19 177:16 9 9 4:21 134:19 134:19 9/30 163:19,20 90-0173 2:5 226:3,24 91 70:25 164:1 97201 2:16,21 97205 3:7 99 72:8,23 9:15 6:8 9:54 34:2 9th 3:6 a a.m. 2:7 aamc 4:17,19 4:21,23 5:1,3 61:6 102:18 105:8,16 106:2 106:6 107:8 108:25 110:18 110:24 111:14 125:24 126:2 142:2,21 148:4 148:4,18,21 149:4 150:14 151:3,16 152:10 206:1
3			
3 4:11 20:21 63:10 68:9,16 69:3 70:10 84:6 86:7,13 87:16 109:4,10 125:21 211:14 30 14:9 18:17 18:20 65:13 140:17 159:13 159:22 3000 3:6 30th 140:9 31 160:8 161:17 33 162:2,12 35 17:25 122:6 38 162:22 39 12:21 3:04 174:21 3:18 1:7 3:46 202:5 3:55 202:5 3rd 139:16 140:3	5 5 1:18 2:6 4:14 88:21 122:23 122:24,25 139:1,6,13 174:25 185:12 209:24 210:22 210:23,23 211:25 224:23 5.1 189:22 50 18:5,5,6 65:12 50th 217:21 51 166:2 525 121:7 525,000 119:14 120:1		
4			
4 4:12 68:16 69:3 70:22 84:18 109:10 120:9,10			

[aamc's - administrative]

aamc's 108:20	209:13 210:15	achieved 211:8	adapted 75:8
abev 21:8	acceptable	213:21 224:25	76:13 83:25
103:15	192:19	achievement	add 38:10
abilities 14:17	accepted 75:25	15:7	155:5 156:4,7
91:15 214:12	76:24	achieving	156:10 182:11
216:14	accepting	191:25	added 123:19
ability 9:7 26:8	187:1	acknowledge	144:8
49:14,21 53:15	access 83:16	219:10 225:14	addendum
91:17 119:25	104:6 106:22	acquisition	130:3
121:14 132:4	110:9 111:13	85:22	addition 21:4
132:13 182:23	126:8,14 149:1	acronym	31:3 124:23
226:17	157:7 159:18	102:18 118:10	175:10
ablations 143:8	159:19 194:13	acronyms 63:5	additional 19:8
able 44:22 45:3	accessed	101:24	21:4 29:15
52:4,5 94:13	106:21 111:8	active 21:3	64:7 101:23
101:17 107:6	accessing	activities 12:23	121:15 143:25
108:13 154:4	148:24,25	64:20 87:7,11	159:23 165:1
179:9 205:23	account 121:14	actual 49:10	180:23 183:17
above 179:8	209:1	87:17 155:21	200:7
180:5 205:18	accumulates	156:11 159:11	address 190:8
208:19	13:5	216:15	addressing
absolutely	accuracy	actually 14:2	191:15
137:13 222:21	148:16 188:15	25:12 29:16	adjourned
absorb 179:10	accurate 52:10	65:23 66:5	225:25
abve 20:2	52:14 71:3	67:13 76:20	adjust 76:25
47:13,18 90:14	141:6 182:12	88:24 89:5	77:3
103:10	221:15 226:13	109:8 110:18	adjusted 16:23
academic 15:7	accurately 9:8	123:7 126:11	78:6
106:13,13,14	accusational	136:8 141:7	administration
106:19 117:22	178:7 182:21	149:5 162:21	57:8,19 58:8
117:24 136:24	accusations	164:11 176:24	58:14 59:21
137:19 138:15	178:13	186:13 199:8	60:12,15
161:3 172:20	achieve 209:9	218:22 220:20	administrative
174:1,3,14,15	214:2,3 217:16	ada 9:21 28:5	14:20 60:13,23
185:17 186:7	217:17	43:11,15	66:6,9

[adverse - answer]

adverse 7:12	agreed 14:22	allegedly	91:15,21 92:17
advised 113:19	14:23 15:12	204:14	92:20,24 93:2
affect 84:21	109:12	alleging 43:18	98:5 103:19
87:8 194:10	agreeing	44:1	107:14 108:16
affected 59:8	225:13	allow 8:21,22	112:13 114:8
87:8	agreement 4:13	27:18	117:4 119:17
affiliation	23:9 62:2,4,18	allowed 35:6	121:1,10 124:1
21:17	120:19 163:17	203:12	124:6 125:8
affirmative	ahead 35:9	allowing 178:9	131:10 137:7
8:10 17:17	39:14 40:3	allows 28:17	142:11 145:14
22:8 38:15,19	41:5,6,21	74:4	151:5 152:15
40:19 74:13	42:21 43:3,4	alluded 205:19	153:2 156:13
146:18 157:17	44:19,20 45:2	alluding 177:3	156:18 157:10
216:21	45:6 50:19	aloud 203:9	158:15 160:1
afternoon 8:5	77:9,20,21	amendment	162:19 163:24
age 91:16	78:4,22 79:1,4	116:24	170:1 171:17
205:23	80:3,4,14 82:7	american 13:12	183:11 186:17
agency 200:21	83:8 84:14	19:11 22:12	186:21,23
200:23	88:17 90:17	28:15,20	188:17 189:3
aggravation	107:19 114:24	102:18	189:15 190:14
179:2	120:3 133:10	amga 106:16	194:2,25 212:5
aggressively	134:14,15	analyses 15:16	annual 21:3
178:6 182:21	135:6 150:20	72:25 89:15	47:16,18 109:2
ago 14:9 59:12	177:19 184:9	91:25 93:15	annually
63:2,3 112:21	189:19 193:4	analysis 23:2	205:10
147:25 159:17	198:4,18,19	27:12 51:19,22	answer 8:15,18
172:7 173:12	ai 96:15	52:17 53:18	8:23 27:21
agree 73:21	aid 23:23	59:6,7,12	34:22 38:3
74:8,12,16	ais 96:11	61:21 68:19	44:6 83:18
79:7 91:4 93:5	align 81:18	69:1 72:4,17	91:1 107:20
93:9 105:20,21	82:3 83:4	72:24 73:17	114:24 118:19
180:19 183:5	100:2 164:17	75:8 76:3,14	118:22 119:3,7
193:9 199:20	aligned 82:1	77:5,16 79:23	147:24 149:15
204:7,20 222:5	alleged 112:9	83:25 85:14	160:23,23
225:19	196:5 212:6	86:16 91:11,14	193:6 196:16

[answer - asking]

196:19 answered 22:21 38:15,18 39:7 43:2 77:19 84:5 131:11 134:13 195:6 198:3,17 answers 94:15 197:3 anticipate 112:6 118:19 antiprofessio... 178:15 anybody 102:23 127:1 137:22 157:22 anymore 199:3 anyway 46:20 115:7 118:18 142:4 apart 87:14 116:23 117:2 137:23 151:1 157:25 168:11 194:14 apologies 212:3 apologize 79:10 210:12 appalling 178:15 appear 42:2 85:6 166:25 186:4 appearances 2:11 3:1	appeared 26:7 26:18 206:10 226:4 appearing 3:12 3:14 appears 116:10 132:8 144:5 204:1 applicable 54:3 applications 201:15 applied 127:4,8 127:13,24 128:3,9 163:3 196:15 198:22 199:17 204:3 applies 75:7 76:12 83:23 apply 222:1 applying 95:16 97:2 appreciate 133:2,2 approach 74:9 75:7 76:12,22 77:4 81:19 82:4 83:5,23 85:9 90:10,21 91:5 184:12,21 213:20 214:19 approached 183:10 appropriate 102:14 160:5 179:7	approximately 199:18 april 23:18 24:10 34:8 arduous 20:11 209:15 area 75:5 119:2 167:3 areas 11:14 12:5,15,15 183:20 191:23 arena 14:1 106:13,14 argue 22:15 198:5 argumentative 120:2 198:3,16 arizona 187:11 arrangement 115:23 arrive 53:19 205:10,12 208:13 217:11 arrived 42:10 42:16 212:23 213:12 214:18 arrogance 178:13 article 4:5 73:11 100:5 articles 26:13 26:21 29:3 38:6 46:12 98:2 109:19 112:16,17	ascribe 78:14 aside 91:4 147:8 196:11 asked 12:6 23:1 25:9,12 32:13 37:24 38:12,14 39:12,16,23 40:12 43:1 45:8 52:3,11 53:2,5,13 62:10 65:7,8 77:18 85:19,19 85:20 92:11 93:9 114:8 116:19 129:22 130:1,2 134:13 134:18 139:22 140:25 147:14 161:10,18 197:18 198:3 198:17 200:12 217:5 220:2 221:25 224:24 asking 35:6,13 42:7 43:22 44:1 50:10 57:6 82:11 94:10,21 100:4 103:12 132:5 161:20 163:10 164:10 166:2 171:2,3 172:12 173:2,4,19 174:2 176:6 185:13 193:24
--	---	--	--

[asking - back]

204:13,13 aspect 96:6 aspects 69:20 118:4 assessment 4:6 4:10 14:15 26:12 69:9,19 70:14,16 74:18 76:2 77:5,15 79:23 80:6,18 82:10 83:10 85:13 86:17 88:7 89:15 90:24 94:3 112:8 176:17 193:13 205:3 assessments 76:22 77:23 124:18 assigned 14:13 assist 14:25 157:22 158:2 222:19 assistant 66:4 associate 135:2 135:11,23 169:7 174:12 187:8 205:20 association 47:14 assume 13:10 20:12 22:11 76:9 107:24 141:5 163:23 184:12	assumed 213:20 assumes 44:17 82:5 83:6 184:7 assuming 29:11 162:15 206:18 208:12 assumption 58:16 209:9 213:6 assumptions 136:23 asterisk 122:3 attached 86:11 139:16 143:23 143:24 attachment 153:21 attachments 144:25 attain 166:23 209:12 attained 211:20 attempt 36:23 49:16 124:20 158:22 178:10 190:6 205:15 attempting 41:10 141:6 attempts 49:16 126:21 127:3 attend 47:3 attended 46:24 97:17	attending 177:16,21 178:24 203:11 attendings 179:19 attention 175:1 175:4 190:2 202:22 attitude 177:23 178:3,21 attorney 6:4 7:4 10:7 14:23 attorneys 20:6 20:6 23:5 34:17 35:3 54:5 111:4 208:12 attributed 201:12 attributing 155:22 173:25 audible 8:17 audibly 8:15 august 23:10 163:15 author 59:10 66:20,23 80:6 authored 55:10 55:10 57:6 64:25 65:3 authority 218:13,16 219:2 authors 83:10	available 31:1 156:25 157:1,6 157:8 avenue 2:8,15 2:20 3:6 96:10 average 206:7 206:12 208:20 212:9,25 214:16 216:25 averaged 208:21 213:2 214:4 216:1 avocational 87:11 awarded 125:3 aware 21:20 43:13,16 44:9 54:4 97:20 101:13 102:11 157:9 170:25 180:7 186:8 187:13 190:13 190:25 191:20 awe 162:12
			b
			back 30:13 34:3 51:12 74:20 75:3,18 92:10 103:4 104:7 109:3,15 116:5 121:22 123:11 125:5,7 133:13 134:17 134:18 139:1 142:2 144:24

[back - barrier]

146:17 147:23	86:22 91:11,21	166:19 167:22	107:15 110:23
152:20,20	92:22 104:16	169:6 175:3,17	112:8,19
154:5,10 155:3	110:3,7,14	176:1 177:8,16	114:11 116:6
157:13 159:12	111:8,14	177:21 178:25	119:13 120:18
160:9 164:1,3	116:19,21,23	179:16,19,25	128:22 133:6
174:22,25	117:12 121:1	180:9,24	133:25 134:7
185:12 187:3	122:6,15 124:5	181:11,22	148:21 159:2
202:6,7 204:25	124:8,17,25	182:7,19,25	168:5 176:11
212:4 214:9	126:5 127:7,9	184:6,16	181:21 183:11
225:19	127:12,16,21	185:15 188:1	188:17,25
background	128:8,16	188:11,15	190:20 191:16
12:20 14:7	129:18 130:10	190:25 191:9	196:8 199:1
16:1 101:17	130:18 131:19	193:1,17,25	200:6 201:18
bad 179:22	134:21 135:14	194:5,15	203:6 210:21
199:8	136:3,15,25	195:10,17,21	211:18 221:7
bala 1:5 5:14	137:9,12,16	196:13 197:15	banner 5:17
5:16 6:5 7:10	139:5,15	199:3,9,17	112:22 185:2
17:9,12 23:5	141:13,16,19	200:13,22	187:7,9 188:2
23:13,17 24:9	142:25 143:20	201:1,4,6,22	188:18 189:4
24:11 25:1	144:6,14	202:25 203:20	190:21 191:1
27:13,25 28:10	145:11 146:23	204:2,6,19	191:10 192:5
29:8 30:1,18	147:5,8,25	205:4 209:1,9	192:23 194:16
32:15,22 33:6	148:8,14	209:24 210:25	194:21 195:3
33:12,23 34:7	149:13,23	211:11,24	195:11 196:13
34:17 35:23	150:8 152:6,23	212:7 214:1	196:22 197:10
36:11,21 37:17	153:1,12,13,25	217:16 222:25	198:8 199:2,8
37:22 38:17	154:19,21	223:19	199:21,24
39:3,10,25	155:22,23	bala's 24:17	200:5,12 201:3
40:9 41:2,10	156:6,16 157:8	26:17,24 38:20	201:5 223:1,8
41:15,17,24	158:5 159:22	42:17,22 48:16	bar 47:11
42:2,14 43:17	160:10,22,22	51:4 74:1	barrier 130:14
44:15 48:21	161:7,18 162:2	77:15 79:22	133:7 134:9
52:4 53:20	162:14,19	85:13,15 86:17	195:3,12,14,16
59:15 61:3	163:3 164:10	98:4,24,25	195:17,20
71:25 77:6,16	165:2,23 166:9	103:16,20	196:4,13

[barrier - best]

197:11,22,25	basing 29:12	177:7 184:11	71:14 80:9
198:13 199:5	basis 21:3	189:14 191:8	86:3,21 87:25
200:18 201:7	47:17 135:9	193:5 198:5,19	94:4,22 109:17
201:18 204:8	bates 179:14	202:3,6 222:16	112:15 113:2,7
204:20,23	202:19	224:11,19	113:8 121:2
barriers 27:18	baumgart 3:4	225:16,22	123:2 127:22
29:2 69:18	6:4,15 7:4 11:4	bear 72:10	128:23 129:22
130:7,10 194:3	24:1,7,8 27:9	beautifully	137:21 139:22
194:6,9 195:25	34:1,3,23	147:22	144:25 145:6
196:3,8 197:8	35:13,16,21	becoming	151:8,15 152:8
203:5,5	40:6 41:6,22	143:25 178:18	153:4 161:22
base 32:18 77:1	42:20,24 43:4	beginning 94:7	162:15 165:11
119:13	44:20 45:3,8	behalf 1:17	176:16 177:10
based 12:5 23:8	50:24 70:8,11	56:15	181:12 184:24
41:12 44:8	77:10,21 78:10	behavior 45:20	188:1,10
81:18 83:11	78:22,25 79:2	49:1,2 177:23	191:12 197:17
116:11 118:1	79:5,8,11 80:4	178:8,22	197:19 198:20
119:1,10 135:4	82:8,11 83:17	182:23 190:4	200:20 206:12
136:23 137:10	84:18 88:18	193:16 203:15	206:23,24
137:11 142:14	89:23 90:2,6,9	203:18	207:15 208:22
174:11,12	92:2,6,10	behavioral	208:24 210:2,3
185:20 189:22	107:20 113:25	85:20	213:3,5 219:23
221:10	114:3,7 115:7	behaviors 29:5	221:9 223:2,3
basically 12:16	115:11,19,23	believe 10:8	believed 136:17
14:11 25:6	116:1,4,5	19:9 21:19	bell 144:11
28:24 45:20	120:7,12	24:24 25:6	benchmark
50:7 53:5	122:21,25	30:16 32:12,17	61:6 108:23,24
69:11 86:1	123:6,11	33:1 36:14	216:15
95:21 103:22	133:12,15,20	38:11,12,18,20	benchmarks
147:14,17	134:15 135:8	38:22 41:13,24	112:12 142:14
157:4 169:11	143:15 144:17	42:17,22 45:13	berg 104:13
186:6 218:18	144:23 146:7,9	48:14,15 50:1	105:6 106:2
222:3	159:8,10 164:8	50:4 54:7	best 6:22 9:1
basics 179:11	170:22,24	57:25 59:21	17:21 18:24
	174:19,22	68:21,22 69:4	45:15,16,23

[best - bullet]

48:21 67:1 68:24 91:9 102:25,25 103:22 105:8,9 141:4 155:20 171:5 178:1,4 190:10 226:16 better 49:1 58:12 78:11 93:16 122:13 156:16 181:14 beyond 179:20 big 43:21 45:23 96:11 109:11 132:25 bill 62:11 billing 150:25 151:1 170:12 170:13,16,17 171:4,6,15 207:11 208:4,5 bills 66:9 birds 211:7 bit 8:20 13:20 69:6,13 78:11 109:4 116:13 134:23 157:13 174:4 203:10 203:11 blew 92:3 bls 138:7 215:3 215:13,15 216:20 217:10 217:14,23 218:3,7,18,20	board 13:12 19:11,17,18 21:20 22:12 28:16,19,20 86:24 boards 96:14 96:15,20 bold 205:19 bolded 169:16 169:17,17 205:8 boston 111:17 111:21,22,24 220:25 221:1 bottom 11:12 73:15 121:23 122:4 151:17 157:15 162:22 166:6 181:18 202:20 box 182:3 bradford 3:5 115:3,6 116:3 break 8:6,6,7 34:1,24 37:20 39:19,21 92:3 92:11 115:8 123:8 129:13 144:24 202:3 breakdown 65:8,16 breaking 27:20 brenda 3:4 6:4 7:4	brief 50:11,20 50:21 briefly 7:3 72:14 221:20 bring 50:23 89:2 207:17 brischetto 2:8 2:18,19 4:4 5:21 23:22 24:6 27:7 34:21 35:9,15 35:18,20 40:1 41:3,20 42:18 42:21 43:1 44:17 45:1,5 50:18 70:6 77:7,18 78:2 78:21,24 79:1 79:4,7,10 80:1 82:5 83:6 84:12 88:15 89:20,25 90:4 90:8 92:5 107:18 113:25 115:1,9,13,22 115:25 120:2 133:8 134:12 135:5 184:7 193:3 198:2,16 202:4 224:17 224:22 225:13 225:21 broader 19:3 broadly 43:8	broten 1:16 2:3 4:4 5:21,22 6:4 6:10,16,17,18 6:19,25 11:4 17:21 22:23 24:23 32:11 33:12 34:3 37:2,24 39:9 45:11 48:2 51:3 52:2 61:1 62:2 63:1 66:19 69:8 70:11 74:22 77:11 79:14 83:18 86:10 90:10 92:10 97:12 109:3,24 121:22 123:11 137:25 141:16 144:23 153:19 157:14 159:13 164:24 174:22 185:12 189:16 195:2 202:6 204:12 206:17 212:5 214:24 215:18 221:4 222:17 226:4 brought 103:3 190:1 budget 101:21 bullet 56:1 109:23 111:20 112:16 179:3 179:14,15
---	--	--	--

[bullet - cases]

203:9 bunch 139:10 bureau 138:7,8 138:10 214:20 216:9 busy 65:5,20	calls 15:15 capable 27:11 capacities 137:3 capacity 7:9 9:11 10:21 16:20 17:3 24:19,22 39:5 40:13,23 51:17 52:11 53:2,11 59:6,7 61:18 69:17,17 76:3 76:23 77:5,16 79:23 80:18 85:14,21 86:18 88:11 91:11,14 92:16,19,21,23 93:2,15,25 94:3 98:6 101:19 107:16 121:12 130:10 130:11 131:10 131:15,23 132:14 134:10 186:18,21 188:25 195:4 195:13,18 196:9,14 197:9 198:10 201:19 203:6 204:9,21 205:3 215:13 capital 70:1 capristo 3:15 caption 226:5	cardiac 187:9,9 cardiologist 64:18 93:2 143:16,17 144:1,2 cardiology 114:12 119:13 120:20 155:15 160:15 209:13 210:5 221:7 care 73:2 88:2 177:25 192:1 career 83:22 136:18,24 137:8,15 138:2 186:21 careers 218:23 219:20 carnes 172:5 carriers 14:11 carry 13:2 19:19 case 1:7 4:16 7:5,21 9:16,19 9:20,23 10:1,2 10:3,3 11:6 12:5 13:17,21 14:13,24 16:10 17:5,12 19:6 21:23,24 22:3 22:18,25 23:6 25:7 34:13,16 36:24 39:16 43:14 51:23 52:17,21 54:25	54:25 55:3,3 55:20,20,24 56:8,10,16,18 56:19,23,25,25 57:1,3,8,9,12 57:17,21 58:6 58:8,10,20,25 59:4,16 60:10 61:2,8,13,15,20 62:21 64:1 66:13 68:8 69:16,20 71:17 72:17 74:2 76:25 77:3,11 78:18 80:8,19 80:21 81:2,21 85:15 88:9,13 91:7 92:14,17 92:22 98:4,6,8 98:11,25 103:16,20 108:8 113:18 123:13,14 125:3,11 128:15 139:3 140:5 152:21 159:13 160:8 166:4 170:10 178:11 193:21 205:25 219:15 223:11 caseload 18:23 cases 10:1,13 10:16 18:1 28:4 54:2 55:9
c			
c 2:14 6:1 226:1 226:1 calculated 208:25 calculation 60:9 112:8 207:3 216:4 calculations 60:22 158:11 205:2,13 207:13,22 208:8 209:5 212:15 213:9 213:24,25 215:12 217:12 217:15 218:4 218:11 219:5 call 36:9 78:5 84:23 98:17 105:13 168:18 168:22 171:15 210:15 223:24 called 171:1 172:9 199:2 200:12 210:17 215:15 calling 173:11 200:11			

[cases - clarify]

57:20 61:5,11 65:10,11 93:20 98:14 103:5,12 131:6 cashier 97:3 cassandra 3:13 categories 142:14 category 142:17,21 183:24 cause 197:14 198:11 223:6 caused 49:6 centered 64:18 certain 12:15 34:25 68:1 70:25 85:10,11 102:13 118:3 174:1 190:22 200:19 205:23 certainly 43:22 80:5 85:2 184:13 199:1,5 200:8 204:7 certainty 135:20 154:13 222:6 certification 13:22 14:6 19:10,19 20:1 21:3 28:19 certifications 27:2,16 31:21 63:7	certified 2:4 11:15,22,25 12:12,18,19 13:9,24 14:4 19:12,15,18,22 21:8 28:16 67:9 86:24 certify 226:4 cetera 91:19 205:10 210:1 ceu 88:25 ceus 21:1 29:1 46:18 challenged 38:21 challenging 97:1 chance 129:17 197:20 change 40:4 49:16 158:14 169:25 170:2 173:1,4 219:5 219:17,21 221:13,17 changed 39:8 39:19 68:4 112:7 181:6 220:2 changing 180:20 characterizati... 89:22 133:8 characterize 179:24,25	197:25 characterizing 106:3 charles 1:10 chart 4:11 85:16 86:7 138:20 215:1 charted 150:22 charts 142:9 chastised 203:20 chat 102:22 chatter 105:22 check 114:5 182:3 checking 73:10 200:10 chicago 4:14 chief 135:3,22 137:9 138:3 169:9 208:16 208:21 209:10 209:10,12 211:1,9,20,23 211:24 212:3,7 213:1,8,15,16 213:21 214:3 214:13 217:18 224:25 225:4 chiefs 209:25 210:8 212:20 children 65:6 chilly 123:5 choice 186:7,14 186:16	choose 95:17 chooses 96:1 chosen 15:19 85:12 cigarroa 1:11 7:5 circumstances 28:14 200:6,15 222:25 223:8 cite 89:7 citrus 114:12 114:15 115:24 116:7,14 117:4 119:13,16,21 120:19 121:15 162:4,8 167:1 221:7,12 222:23 city 10:16 55:11 civil 2:2 10:3 18:4,12,13,20 54:2,3 55:3,3,9 55:20 56:8 57:2 65:10 claim 44:24 46:1,4,8 claims 10:3 43:14 44:7 clarification 24:22 141:21 159:14 168:4 169:1,10 clarify 41:10 94:5,6,19
---	---	--	--

[clarify - conclude]

133:3 139:11 140:6 141:22 clarifying 133:20 134:5 137:6 clarity 162:7 164:10 171:23 172:9,12 173:12,24 192:1 213:9 class 4:15 46:19,19,23 47:4 97:17 122:6,7 211:18 classes 31:21 101:12 clear 78:13 79:18 86:5 111:7 113:9 133:5,24 137:25 150:5,7 154:20 169:10 173:18 178:14 clearly 74:5,10 177:25 203:12 203:21 clicked 153:23 client 38:22 clinical 5:10,15 12:10 75:7 76:12 83:24 117:14 177:24 185:18 192:2 close 18:1 182:4,4	closed 162:23 coach 190:7 code 64:17 colleague 188:2 colleagues 21:7 89:6 181:24 185:3 192:24 collecting 69:11 81:5 82:12 come 50:7 64:7 69:16 95:17 97:8,10 123:17 137:4 138:25 138:25 151:6 164:1 225:19 comes 8:1 12:22 104:25 comfortable 203:13 comfortably 52:5 coming 62:11 178:15 comma 189:24 commencing 2:6 comment 135:24 commenting 131:1 communicates 191:19 communication 104:7 183:21	191:16,17,18 191:24 192:4 193:1 199:4 communicati... 34:25 35:2,2 103:14,18 189:23 190:19 community 138:10,11 203:1 204:18 comp 4:17,19 4:21,24 5:1,3 14:1 16:5 28:8 67:6 102:3 148:3 company 117:16 compare 94:23 193:18 compared 93:14 147:18 161:1,19 compensated 218:23 219:19 compensation 5:6,8,12 61:6 97:22 99:17 101:4 102:9,11 102:13,14,25 103:22 104:3 104:14 106:12 107:22 108:2 108:15,24 109:16,22 110:8 111:12	111:23 112:12 119:6,21 120:21 121:15 121:16 126:3 138:6 142:9,14 144:10 218:16 219:4 220:20 221:14 complaint 25:15 41:14 complaints 24:17 25:1 190:3 complete 23:1 63:7 86:2 218:10 complies 54:8 components 88:7 93:18 95:1 comprise 171:16 comprising 106:7 concerned 93:17 203:19 203:20 concerning 48:25 177:22 concerns 49:25 204:7 conclude 44:14 121:11 138:2 212:8
--	---	--	--

[concluded - contract]

concluded 38:17	confirm 32:14 51:14 53:1	consistent 198:14 215:19	contained 85:11 104:11
conclusion 26:10,23 42:16	79:19	consistently 179:8	111:15 147:4
73:16 132:15	confirmation 155:21 223:16	consists 15:21	contains 54:13
conclusions 74:4 112:14	confirmed 104:4 105:5	constant 18:15	82:20
119:18 152:15	109:6	constitutes 220:12 226:12	contemptuous 192:13
153:3 160:1	confirming 162:1,2	consult 39:20	context 72:16
171:18 205:7	confrontational 179:21	61:5,7 90:13	98:10 142:11
condensed 48:20	confused 173:9	108:13 172:1	171:25
condescending 178:5 182:20	204:10	consultant 76:9	contexts 16:16
conducive 192:14	confusing 202:11 203:10	consultant's 75:6,9 76:12	continue 138:16 169:6
conduct 15:15	203:11	76:16 78:19	174:23 180:22
17:11 27:5,13	connected 204:3	79:24 82:4	continued 3:1
28:23 29:17	conscious 180:8,12	83:5,23 88:21	5:12 50:8
30:2,9 76:2	consider 15:1	89:12 90:10,11	132:7 190:3
77:15 92:16,19	120:4 121:7	90:21,22 91:5	continues 157:15
conducted 17:9	124:18,23	91:6	continuing 21:1 27:17
71:21 72:2	142:4 182:17	consulted 26:21 61:10	45:5 46:14,23
100:13	182:24 194:8	98:1	47:8 88:25
conducting 76:22 77:4	195:14 197:10	consulting 146:22	89:20 90:1
117:3 119:17	considered 34:18 35:4,25	contact 24:8	97:16 162:19
conference 46:14,24	36:13 104:1	95:10 200:22	185:25
conferences 38:6	121:3,4 195:15	contacted 17:14 222:23	contract 49:9
confidence 178:2	201:7	contacting 95:16	49:13,13 60:1
confident 33:21	considering 183:4,8	contacts 171:7	114:18,22
		171:7 180:13	115:4,9,15,17
		contain 54:2	116:11,14,25
		85:18	117:5,6 119:11
			119:11,16
			120:5 162:10
			196:6,18 197:1

[contract - course]

202:1 221:12 221:23 224:5 contracts 95:24 115:3 contractual 115:23 control 203:15 conversation 23:21,23 24:2 24:10 35:11 36:8 116:23 117:10 134:20 136:16 147:10 166:8,15 168:25 169:24 172:8 173:23 223:25 conversations 35:23 37:8,16 41:14 42:2 124:10 130:18 136:4,17 164:16 165:1 167:6,15 168:1 168:2 169:12 170:4,8 171:21 171:24 174:16 188:12 converse 156:5 copied 145:5 copies 145:6,6 145:19 146:14 147:19 copy 114:18 140:15 145:4	169:15 core 72:25 corner 162:22 corners 218:8 corporation 1:10 correct 7:10 8:2 11:17,20 11:23 12:1 19:13,24 22:19 23:6 25:2,20 26:4 29:13 31:15 33:24 34:9 38:3,7,8,9 38:13 40:18 43:11 48:16 51:17 53:6,10 53:22 54:15 55:11 56:21,23 64:12 71:19 76:3,20 77:6 77:11,17 79:21 80:8 81:7 85:3 91:7 92:24 93:3 99:5,9,13 110:2,14 114:13 115:22 119:14 121:12 121:17 123:15 126:18,22 128:10 132:10 134:21 136:5 141:10 145:11 146:24 148:1,5 148:11 150:14	163:3 164:14 165:4,12 166:9 177:11 184:16 184:23 185:18 186:12 189:1,5 191:17 193:2 193:14 194:18 194:22,25 195:25 196:6 199:18 200:1 201:13,20 202:1 203:7,25 204:9,21 205:4 211:1 220:7 221:6 223:17 225:10 correcting 6:23 correctly 24:24 69:24 71:5 78:12 183:14 183:15,21 214:5 217:1 correlate 65:15 219:4 cost 106:21 cotter 107:9 154:24 155:24 157:3 160:14 counsel 2:22 3:8,11,13 7:18 23:24 24:2,9 24:12 34:9 35:23 36:11 37:8 39:20,21 129:3 141:3	144:7,15 152:2 168:10,12 170:18 171:7 224:14 226:8 counsel's 30:14 83:20 119:10 counseling 12:14 130:5 counselor 11:15 12:20 13:6,23,25 14:5,5 17:5,23 28:16,19,20 102:2 212:19 counselors 103:9 217:2 218:1 count 55:8 184:3,3 197:22 counterprodu... 178:20 couple 32:7 37:25 59:11 64:13 68:7 70:25 87:12 97:25 114:19 117:15 124:10 129:1 155:3 163:8,22,22 170:6 176:5 182:4 198:11 202:21 210:8 course 31:25 46:15 48:6,13 97:16 117:2
--	--	---	--

[course - deficient]

123:25 124:5 124:14 189:3 189:15 191:4 194:17 199:19 court 1:1 7:19 8:15 57:5 58:25 70:11 202:14,15 223:11 cousin 6:25 cover 48:4 95:14 109:9,9 221:6 covering 14:15 covers 221:4 crap 140:17 create 77:3 created 76:21 77:13 78:19 82:3 83:4 84:11 130:13 130:14 199:8 creating 100:16 130:2 credential 12:9 12:10,11,13,17 13:10 20:18 22:23 credentialed 12:16 credentials 11:9,13 12:3,7 22:23 27:10,23 30:16	credibility 124:18,18 credits 21:2 27:17 critical 179:21 cross 58:5 crosses 13:4 cruising 161:4 crunch 207:22 csr 2:5 226:3 226:24 curious 168:13 184:2 current 18:3,23 63:7,8 64:20 87:3 91:17 114:12,15 115:20,21 116:25 162:7 166:25 192:18 currently 16:23 17:20 21:19 47:22 63:8 65:21 87:13 100:22,24 155:15 225:4 curriculum 100:18 101:12 cv 1:7 10:15 54:13,17,17 62:24 63:10 64:19 100:25 101:2	d d 6:1 d&r 56:12 dad 163:25 daily 87:7 dangerous 203:22 dano 3:15 data 34:15,15 34:18 35:3,11 35:24 36:12 37:6 64:11 69:12 81:5 82:12,24 107:22 108:5 138:7,8 151:16 151:16 154:23 155:24 156:14 158:1 159:16 160:14 162:18 162:21 171:17 187:24 200:3 214:25 216:16 217:10,14 218:8,18,21 219:6,22,23 220:11,19 date 6:7 54:17 54:19 62:7,17 140:15 163:7 164:21,25 181:21 213:16 dated 140:8 163:8	dates 140:11 164:2,14 day 107:14,14 150:23 213:15 226:19 days 163:8,22 decide 156:20 158:25 decision 30:8 73:16 156:17 180:8,12 189:21 206:5 216:3,24,24 decisions 159:1 declined 190:8 defend 49:6 defendant 3:8 9:18 141:1 defendant's 173:3 225:15 defendants 1:13,17 defense 55:21 56:15 141:3 165:2,8 defensive 178:3 178:6,13 182:21 defer 33:18 defibrillate 143:9,11 defibrillators 143:9 deficient 190:5
--	--	--	---

[define - different]

define 25:13 33:7 45:9,10 45:18 63:14 162:10 defined 81:16 definition 217:20 definitive 132:19,22 133:5,24 degree 5:10 14:8 178:14 demeaning 178:5 182:19 182:20 department 64:9,9 209:13 210:25 211:20 216:11 departments 5:11 depending 69:20 97:1 118:2 196:15 196:21,21 198:22 depends 18:22 69:22 95:25 118:5,5 194:11 195:22 deposition 1:16 2:2 6:3,5 7:8 7:14 9:10,15 10:19,21 11:5 56:20 74:23	112:19 145:2 185:21,24 186:10 202:12 202:12,15,16 225:14,25 226:16 depositions 29:21 depth 203:13 derive 65:16 84:8 derived 4:8 70:15 81:12 84:15 90:24 derives 83:2 describe 13:14 13:16,17 16:7 25:4 69:12 90:9,20 93:13 104:5 108:14 described 19:7 48:2,13 71:21 99:23 132:11 185:4 describing 96:7 107:7 description 4:2 descriptions 15:16 143:3 designated 9:12 10:20 14:2 21:25 167:7,16 designation 13:18 28:17	desire 185:16 detail 33:17 67:25 165:18 details 50:13 determination 38:24 51:17 156:23 214:17 determinations 158:3 determine 14:17 16:24 26:17 39:12 52:3 53:14 91:17 102:13 124:20 138:17 138:18,18 156:10 215:6 determined 190:9 213:15 determining 27:3 29:3 156:14 158:1 develop 24:18 24:21 35:12 101:10,11 137:3 developed 101:3 122:5 developer 14:2 14:3 developing 13:8 14:25 15:20 95:13,14 development 12:23 93:21	developments 93:25 diagnoses 143:14 diagnosis 132:25 dictionary 64:2 differ 106:15 difference 107:3,8 130:25 131:9 142:6 161:21,25 222:2 differences 96:22 97:3,5,7 107:10 108:14 108:18,21 142:13 different 7:22 15:12 17:15 52:20 62:18 65:7 69:20 73:24 95:18 96:11,13,20 118:4 130:4 131:18 146:15 146:20 147:2 147:24 149:17 149:20,25 153:11,13,15 169:20 182:2,9 192:22,24 193:17 197:2 219:10
--	--	--	--

[differentiate - documents]

differentiate 40:14 176:16 176:21	disclosed 7:9 41:8 167:7,19	discussing 59:17 69:18 86:4 135:14	79:5 82:22 103:25 150:24 192:9 211:25 225:10
differentiates 62:18	discord 18:4	discussion 5:19 135:1 185:20	documentation 109:6 111:15 151:1 152:16 202:9 215:14 216:19 217:3
differently 24:5 145:5	discounted 183:9	191:1,9 192:7 197:15,20 200:16,17	documented 5:19 108:19 124:11 136:3 190:25 191:9 192:7 201:8,10 212:19
differs 143:15	discriminated 33:24 38:12,17 39:13 41:17,24 43:25 53:21	discussions 42:13 49:2 170:17	documents 26:14 30:21,22 30:24,25 31:4 36:2,4,6 38:23 41:8 42:1,11 44:4 63:9 68:10,18 69:3 69:15 80:20 81:11 82:21 109:7 111:7,15 112:2 113:1 114:11 122:5 122:19 129:4 139:11,14 140:22 145:3 151:24 153:9 158:17,18,24 175:7 176:2,10 194:17 209:19 222:9
difficult 8:24 59:23 121:20 178:23 189:20 197:17	discrimination 10:4,12 25:8 25:11,13 26:3 27:25 28:11 32:16 37:22 38:25 39:11,25 40:8 41:2 42:3 43:8,14,18 44:2,8,15,24 46:4,8,15,25 48:5 52:7,8,19 52:23 56:11,12 59:19 187:18 187:22	disease 143:18	
digest 116:9	dismissive 191:19	displayed 29:5	
diplomat 12:16 13:13 19:12 20:15,16	disrespectful 191:20	dissatisfaction 167:2	
direct 63:11 175:1,3 202:22	dissolution 18:8	dissolution 18:8	
directed 153:25	distinct 71:1,6	distinct 71:1,6	
directly 65:15 90:3,6 158:23 168:13 219:13 219:25 222:23	distinction 100:6	distinction 100:6	
director 59:22 187:8 220:15	discriminatory 27:5 28:22 29:17 30:2,9	district 1:1,2	
directors 100:17	discuss 24:16 33:1 39:3	division 1:3 209:10,12 211:1 225:4	
disability 14:12 28:5,8 43:10 43:11 69:21	discussed 16:21 22:24 32:19 34:12,13,16 59:16 91:22,23 123:1 171:22 185:15 198:23	divorce 54:25 61:13,15	
disabled 16:7		docs 92:1 99:20	
discern 205:15		doctors 15:17 16:8 193:18,21	
discharge 10:4		document 31:7 70:19 75:24	
disciplined 192:4			

[doing - earn]

doing 12:20 17:24 38:5 45:17 49:19 60:9 67:4,10 72:16 81:10 87:2 88:4 91:25 132:6,7 144:4 156:13 178:9 200:9	59:15 61:3 71:25 74:1 77:6,15,16 79:22 85:13,15 86:17,22 91:11 91:21 92:22 98:4,24,25 103:16,20 107:15 110:3,7 110:14,23 111:8,14 112:8 112:19 114:11 116:6,19,21,23 117:12 119:13 120:18 121:1 122:6,15 124:5 124:8,17,25 126:5 127:7,9 127:12,16,21 128:8,16,22 129:18 130:10 130:18 131:19 133:6,25 134:7 134:21 135:14 136:3,15,25 137:9,12,16 139:5,15 141:13,16,19 142:25 143:20 144:6,14 145:11 146:23 147:5,8,25 148:8,14,21 149:13,23 150:8 152:6,23	153:1,12,13,25 154:19,21 155:22,23 156:6,16 157:8 158:5 159:2,22 160:10,22,22 161:7,18 162:2 162:14,19 163:3 164:10 165:2,23 166:9 166:19 167:22 168:5 169:6 172:5,5 175:3 175:17 176:1 176:11 177:8 177:16,21 178:25 179:16 179:19,25 180:9,24 181:11,21,22 182:7,19,25 183:11 184:6 184:16 185:15 188:1,11,15,17 188:25 190:20 190:25 191:9 191:16 193:1 193:17,25 194:5,15 195:10,17,21 196:8,13 197:15 199:1,3 199:9,17 200:6 200:13,22 201:1,4,6,18,22	202:25 203:6 203:20 204:2,6 204:19 205:4 209:1,9,24 210:21,25 211:18,24 212:7 214:1 217:16 221:7 222:25 223:19 draft 160:19 168:6,8,16 drawn 73:17 83:21 dripping 170:20 dt 21:10 22:11 104:15,19 165:4,12,19 220:7 duces 171:1 duly 6:12 226:6 e e 6:1,1 81:15 226:1,1 earlier 22:16 34:6 45:8 46:10 57:10,16 57:22,25 63:4 65:8,21 92:12 139:9,13 141:24 150:11 early 176:15 181:15 191:12 earn 53:15 91:18 121:15
---	---	---	---

[earn - employer]

212:9 216:12 earning 16:20 17:2 24:19,21 39:5 40:12 41:7 51:17 53:2,11 59:7 61:17,18 69:17 69:17 76:2,23 77:5,16 79:23 80:18,23 85:13 86:18 87:5 88:11 91:11,14 92:16,19,21,23 93:2,15 94:2 98:6 101:18 107:15,23 121:12 130:11 131:10,15,23 132:14 134:10 137:3 172:24 186:18,20 195:4,13,18 196:9,14 197:9 198:9 201:19 203:6 204:9,21 205:3 215:13 218:10 earnings 59:6 60:8,22 61:22 93:25 112:9 121:1 156:13 188:25 209:1 212:6 ease 123:18 169:14	easy 169:3 economic 205:7 economist 155:8 169:3,14 209:6 educated 46:25 education 13:7 14:16 21:1 27:17 46:14,23 47:9 85:20 86:25 88:25 91:16 97:16 101:17 122:3 159:2 192:3 215:9 educational 179:1 eeoc 58:9,10,17 efficiency 123:18 efforts 178:12 210:14 eight 172:23 177:21 205:17 either 36:9 55:10 57:1 85:6 117:10 127:9 128:6 136:16 150:8 157:7 158:15 181:25 207:7 electric 143:5,6 143:6 electrical 143:7 143:13	electro 143:6 electronic 143:7 electrophysio... 93:3 143:1,21 161:1,19 203:1 219:2 electrophysio... 219:19 electrophysio... 187:9 elements 43:6 44:14,23 45:4 45:25 46:3,7 eligibility 14:14 15:5 eligible 14:21 ellis 2:13,14 4:3 5:20 6:6 31:9 70:9 115:2,4 email 105:1 115:16 139:16 140:7,8 144:25 147:20 emails 114:19 115:3,5,16 116:10 emily 3:11 emotional 130:10 132:12 133:19,25 134:7 emotionally 132:7	emotions 125:17 130:5,6 emphasis 82:25 empirical 84:10 empirically 4:8 70:15 employ 16:9 19:4,5 69:7 79:16 employability 26:11,18,25 29:19 59:8 82:25 83:11,14 88:5 98:6 130:11 133:7 134:10 188:25 194:3 195:13 195:18 196:9 196:14 197:23 198:9 201:19 203:6 204:21 employable 16:17 employed 26:16,23 employee 27:12 27:24 28:10 29:9 30:18 32:6 45:22 65:22 employees 32:5 employer 14:13 29:5 32:4 187:17,22 194:11 197:5
--	---	---	---

[employer - exactly]

200:4,12,14,23 200:25,25 204:10,13,14 204:17 employers 14:12 28:4,7 28:15 195:22 199:2 200:10 201:3 204:2 employment 4:12 9:23,25 10:2,4,18 16:2 25:2 27:19 29:2,23 53:21 56:10,12,23 57:2,9 64:8 96:1 112:22 114:12,18 116:6 120:19 124:19 132:4 162:10 175:12 176:11 183:11 187:5,7,13 189:21 190:11 191:10 192:23 193:25 194:4,6 194:9 195:3,23 197:9 199:24 204:8 215:12 216:10 enable 190:6 encompass 48:3 ended 82:8 125:14	endocrinolog... 98:19 99:5 endro 98:14,17 98:18 endros 98:17 ends 73:4 engaged 163:14 170:5 engagement 167:5 entails 93:17 entire 41:9 87:19,20 171:2 225:9 entirety 224:13 entitled 35:7 70:13 entry 225:10 environment 178:20 192:15 envision 200:8 ep 31:6 64:3 111:2 142:17 144:4 160:15 164:11 178:25 179:12 219:25 220:1 episodes 178:7 182:22 eps 64:12 87:25 142:21 210:8 211:3,19 equivalent 5:10 error 74:5,16	errors 95:14 especially 12:22 16:21 64:4 178:15 192:2 200:21 essentially 25:24 48:22 49:11 85:22 88:4 125:18 135:25 143:5 173:17 208:18 220:16 establish 41:12 100:18 established 199:16 esteem 128:18 estimate 17:21 18:24 62:6 67:1 estimated 65:8 et 91:19 205:10 210:1 ethically 38:21 eval 92:21 183:3 evals 183:24 evaluate 14:13 15:14,14 25:9 46:25 77:14 80:17 99:1 101:13 108:4 124:17 193:24 evaluated 81:6 82:13 91:23	108:6 evaluating 12:23 60:8 69:13 79:22 80:23 85:12 107:15 131:23 137:15 188:24 195:25 197:8 evaluation 5:13 15:3 91:18 131:15 177:8 212:6 evaluations 175:11,17 181:7 evaluator 12:1 12:18 22:18 23:4 28:16 valuee 84:22 84:23 evening 155:7 160:19 everybody 7:20 36:4 everyone's 15:23 evidence 42:1 44:18 82:6 83:7 184:8 199:7 201:8 exact 90:18 exactly 96:18 96:25 126:17 135:21 160:25 161:18 163:11
--	---	--	---

[exactly - expert]

165:25 exacts 116:13 examination 6:14 224:21 226:8,13 examined 6:12 226:7 example 34:17 47:9 65:10 106:15 112:23 173:2 examples 175:7 excel 144:9 149:14 207:23 excellence 191:25 excellent 181:22,23 except 23:3 207:4 exceptional 175:21,23 excerpts 152:9 exchanged 171:25 excuse 11:9 30:23 51:4 84:6 92:13 151:5 165:7 198:24 202:15 206:24 211:1 executive 211:15 exemplary 175:7,18 180:1	180:19 181:4 181:23 182:7 182:24 exhaustive 63:12 64:20 exhibit 4:1,3,5 4:11,12,14,16 4:17,19,21,23 5:1,3,5,7,13,16 5:19,20,22 11:3,5 29:20 51:13 66:21 67:16 70:5,7 70:10,12 74:23 77:14 86:7,13 87:16 113:17 120:9,10,17,20 120:23 121:16 122:23,24,25 123:10,13 125:21 130:20 139:1,6,6,13 145:1,10,17 146:5,6,8,10,11 146:17,23 147:5,9 148:1 149:24 150:9 151:7,14,15 152:14,16 158:18 161:11 165:15 170:14 175:1 177:6,7 177:14 180:24 184:4 185:6 189:11,12,15	191:6,8 202:7 202:14,15,16 209:24 210:20 210:23 211:25 221:22 222:14 222:16 224:23 225:24 exhibiting 177:22 exhibits 28:3 144:22 145:2 145:17 expand 93:23 expect 153:11 153:12 expectation 169:6 expected 216:12 experience 20:19 29:9,12 32:15 51:5,20 52:13 95:23 97:8 129:21 130:19 131:4 131:13,20,21 131:24 133:6 134:8 136:5 159:2 168:5 204:6 214:12 215:9 218:13 218:15 219:3 experienced 25:10 26:3 27:4,13,25	30:1,19 39:25 41:2 experiences 13:7 26:7,17 26:24 49:20 92:1 197:7 experiencing 52:6 expert 7:9 9:12 10:20,20 11:20 11:22 12:12 13:6,10,13,17 13:19 19:4,6 19:11,12,16,20 19:23 20:2,17 21:25 22:25 23:15 27:3,11 27:24 28:9,21 30:17 32:21 33:23 35:4 37:21 38:2,16 38:21 40:17,18 42:17 43:10 50:15 51:19 52:11,18 53:1 53:9,12 57:1 58:21 67:3,4,7 68:19 69:1,8 74:17 85:1 114:9 117:6 125:9 130:9 165:2,8 167:20 193:13 194:1 195:16,25 212:1
---	---	--	--

[expertise - figures]

expertise 12:22 22:17 65:4 75:5	104:19 131:25 132:1,13 142:13 145:10	190:2,9 204:4 204:19	feedback 178:12 179:20 179:24 180:10
experts 20:10 22:13,14 28:20 167:6,16 173:3 218:1	148:7 156:15 167:2 182:11 182:13 184:7 184:18,22	fair 22:11 33:19 35:16 42:20 43:21 54:7 60:4 61:19 78:20 94:15 95:3 96:21 107:17 107:24 120:7 136:13 198:25	180:24 182:12 182:25 183:5,9 183:10 184:2 184:15,19 185:3 190:22 191:22 192:5 192:12,17 193:1,10 194:4 194:14 203:24 204:5,19
explain 13:23 41:1,16 42:9 43:6 44:14,16 44:23 45:3 115:20 135:9 186:20	186:9 188:22 195:10 196:12 197:6 200:17 218:25	fairly 59:23 77:23 88:6 93:6 169:10 176:25 182:12 190:21	feel 75:21 178:25 179:22 210:19
explained 218:4	factor 125:8 156:16 157:10 186:16 194:5 195:5 221:11	familiar 7:17 21:7 53:24 54:1 67:19 70:19 72:9 73:5 118:7,12 120:12 145:3,8 146:11,12 151:18,19 191:11 200:10	feelings 125:17 feels 67:8 fees 62:6 fellow 178:4,10 185:4 203:16 fellows 95:12 179:9,12 203:12
explanation 45:23 86:12 216:1	factored 186:20 195:7	family 223:5	felt 56:13 59:19
expressed 35:5 85:16	factors 14:15 138:5 194:11 194:13,13	far 93:17 157:25	fib 143:13
extended 50:4	facts 34:12,18 35:2,11,24 36:12 37:6 43:19,23 81:5 82:12 83:12 171:16 187:24 200:3	fashions 95:18	field 20:7,19 52:6 65:4 103:13 105:7 211:16
extension 115:15		fast 160:21 171:9 179:9	fifteen 222:7
extent 60:7 139:11 160:4 169:12	factual 131:24	father 197:18	figure 121:5,21 206:2
extra 68:21	faculty 5:8,13 151:17 175:11 175:17 176:4,6 176:9,18,23,24 177:8 181:25 184:14,23 185:4 189:20	federal 21:24 54:3	figures 155:7 155:14,16
extremely 178:2 189:25			
f			
f 226:1 facilities 221:2 fact 29:18 44:17 53:9 77:2 82:5 83:6			

[figures - forensic]

156:9,11 157:4 157:6 158:10 172:14,17 205:25 206:8 figuring 215:19 file 25:22 30:20 30:21,24 31:3 36:1,4,24,24 41:9 43:19,21 44:4 68:14 81:10 82:21,22 103:24 109:11 110:2 111:16 113:4 120:16 122:5,17,18,19 123:15 124:22 140:10 145:5 151:24 152:2 170:11,12,13 170:16,25 171:2,5,6,15 175:7 177:9 191:5 199:7 201:9,11 207:5 207:8,10,11,13 207:15,17 209:19 224:13 files 68:8 113:13 153:18 final 72:7 168:8 221:3,5,22 finalized 163:9 finalizing 163:23	finally 73:4 192:17 220:9 financial 87:3 91:19 find 29:15 72:8 75:22 90:14 104:7 114:17 126:20 131:2,2 140:19 141:14 161:24 206:3 finding 162:13 findings 108:19 fine 8:8 18:24 18:24 27:21 35:21,22 55:5 55:5,6 58:3 74:25 106:10 113:17 134:2 139:10 168:12 170:22 183:8 210:13 fingers 151:21 finish 8:21,22 22:6 78:22 79:8 90:17 92:7 fired 189:4,7 195:17 196:13 first 2:8,15,20 11:11,11,12 13:23 16:22 19:15 20:13 21:22 23:17 24:8,23 34:6 43:7 51:15	53:4,6 55:12 55:13 61:8,20 61:20 75:15,16 75:24 81:4,25 92:22 93:1 98:16 107:16 107:21 108:3 116:14 127:20 127:24 144:1 154:18 155:10 155:14 158:7,7 159:15 160:11 162:6 175:2 181:11 185:14 185:14 186:7 186:14,16 187:21 205:8 212:15 214:1 217:15 223:22 226:6 fit 131:14,22 five 18:16 32:9 32:10 46:22 47:19 50:2 75:11 76:17,21 77:4,13,25 78:19 79:24 80:5,15,25 81:2 84:1 85:5 88:12 89:3,9 89:13,19 92:4 135:12 172:22 172:23,23 174:20 205:17 206:15,17,18	206:20 213:7 213:19 222:7 fix 159:8 flip 62:3 123:24 125:22 126:19 134:17 flipping 157:13 florida 167:3 flow 4:11 86:7 fmla 187:16 focus 58:20 focused 29:25 30:3 37:4 196:4 203:18 folder 144:8 folks 22:11 138:11,21 211:8 follow 37:23 52:1 75:25 76:5,24 78:7 85:15 91:5 followed 71:18 91:9 200:20 following 30:13 79:16 83:21 123:12 follows 6:13 footnote 20:21 70:22 forbess 3:13 foregoing 226:11 forensic 4:9 11:22 12:12
---	--	--	---

[forensic - give]

13:9 17:24 18:3,6,12,20 19:4,10,16,19 19:23 20:2 54:1 65:9,17 65:17 67:11,12 67:14 70:16 73:4,14 103:10 forget 65:12 101:24 164:5 171:9 forgive 92:11 92:16 form 35:1 39:24 66:18 80:6 88:8 89:23 130:9 147:2 158:23 193:3 formal 23:9 60:24 92:23 93:19 95:2 99:8,25 108:9 formally 23:14 format 129:2,9 140:8 146:10 149:25 formed 174:11 formerly 11:16 formidable 124:9 forming 34:18 35:4,25 36:13 37:7 63:25 151:4 189:16	formula 208:18 formulated 173:20 formulating 41:7 85:1 formulation 72:5,25 73:5 73:14,18 forth 28:6 63:19 154:5,10 157:13 160:9 217:23 forward 15:6 15:10,20 101:22 forwarded 144:11 found 109:18 114:16 154:23 155:23 160:12 219:6 foundation 41:4,20 78:3 four 11:14 118:4 144:3 218:8 fourth 11:25 fox 9:21 56:18 frame 205:24 frcp 34:25 free 75:21 123:24 frequently 49:7 fresh 178:16	friends 210:7 front 51:13 113:23 118:16 173:15 full 20:18 175:2 185:14 212:18 221:5 225:18 226:12 fully 9:8 functional 85:21 further 25:4 future 26:25 29:19 59:8 73:2 88:2 91:18 130:11 132:14 134:10 195:3,13,18 196:9,14 197:4 197:9 198:9 201:18 204:8 204:10,13,14 204:17,21	general 29:24 34:14 75:4 77:23 96:18 107:5 117:11 117:19 124:13 143:17,25 144:2 174:8,9 179:9 214:22 generally 15:17 46:11 53:24,25 54:4,5 55:23 59:5 68:14 69:8 71:8 76:5 76:24 77:22 78:7 80:21,24 97:4 107:7,13 117:14 136:15 145:3,7 169:5 219:7 gentleman 188:7,9 geographic 197:2 george 9:21 56:18 getting 19:2 49:23 83:18 103:12 135:4 140:7 159:14 164:3 194:10 gist 135:4 give 17:20 38:2 45:15 46:6 47:2 48:20 50:11 84:16
		g	
		g 6:1 gaining 29:1 67:7 gargiulo 55:15 56:6,11 57:1 garner 52:4 gathered 144:14 gee 50:6 gender 44:8,23 46:4	

[give - guess]

113:10 118:10 118:22 178:12 187:2 224:9 given 36:5 54:1 56:20 131:3,24 164:25 192:7 192:17,19 200:8 226:14 gives 20:18 125:18 216:9 216:15 giving 39:15 glance 113:10 113:11,12 glick 172:5 glusman 174:16 go 7:16 8:5 29:1 30:13 33:16 35:9 38:6 39:14 40:3 41:5,6,21 42:21 43:3,4 44:19,20 45:2 45:6 50:19 51:1 56:5 75:6 76:8 77:9,20 77:21 78:4,22 79:1,4 80:3,4 80:14 82:7 83:8 84:14 88:17 90:17 92:4,8 104:24 105:2 106:8 107:19 113:12	114:24 120:3 123:6 125:16 130:4 131:8 132:25 133:10 134:14,15 135:6 140:18 144:19 146:17 147:23 149:4 150:20 163:1 170:23 177:19 179:11 184:9 189:19 193:4 198:4,18,19 205:1,6 214:9 214:15 221:16 224:4 225:3,20 goal 15:19 goals 15:11,14 15:19 goes 7:21 73:3 130:24 going 6:8 8:4 9:6 11:8,12 23:22 30:15 33:15 34:21 35:9 37:1 39:17 42:7 53:3 59:18 67:25 68:1 74:22 80:12 84:7 87:14 89:20 92:2,7 97:6 99:14 106:8 107:9 111:6 122:2,21	125:20 129:1 130:17 139:2 140:13 142:1 144:17 147:11 148:18 149:1 155:3 156:7 159:11 164:18 172:23 173:1,4 174:5,6 187:4 188:23 194:12 197:16 200:24 205:1,6,18 gold 105:17 106:3 good 6:16,17 9:2 10:13 12:25 16:3 31:18 62:12 63:6 65:18 74:8 98:22 100:15 103:11 103:11 125:19 149:5 151:12 154:2 155:5 156:4,6,21,22 157:24 160:19 164:2 168:9 170:17 172:13 175:20,21,23 175:23 177:24 183:23,23 184:5 210:19 225:22 gosh 130:15 166:22	gotten 171:3 government 119:5 graph 4:15 122:5,25 155:6 156:5 158:23 206:4 graphs 156:18 gravely 197:18 great 8:18 49:19 50:24,24 81:24 124:12 138:23 210:22 green 65:23,25 66:1 green's 66:3 grossly 178:7 182:22 ground 7:16 8:13 group 5:5,18 36:20 162:11 187:10 220:12 groups 95:20 guarantee 121:7 guaranteed 115:14 116:12 guess 17:8 27:19 45:23 49:3 57:15 100:11 116:9 142:3 143:6 150:24 165:20 173:9 179:15
---	--	---	--

[guess - human]

194:8 212:18 guidance 192:2 guide 106:11 guides 97:23 138:6 gusman 174:17	harmful 26:8 26:18,24 27:4 27:13 29:16 30:2,9 head 8:17 10:14 107:11 155:3 179:8 heading 11:13 72:24 health 1:8 5:5 85:20 101:9 117:17 131:1 133:19 134:1,7 189:4 191:10 192:23 194:16 194:22 195:3 195:11 196:13 196:22 198:9 200:5 223:9 hear 9:2 16:3 204:19 214:5 heard 52:25 105:13 118:13 147:24 223:12 hearing 60:23 96:21 heart 143:7,13 heavy 163:24 held 6:6 help 8:14 47:6 85:9 100:18 101:8 156:16 188:24 helped 162:10	helpful 16:1 54:10 84:5 87:15 114:1 156:6 213:12 helping 179:23 henrikson 1:10 7:5 136:9 henski's 219:14 hey 102:23 199:2 high 59:23 186:2,11,22 195:5 206:10 higher 20:17 62:19 158:15 169:8 218:16 219:4 highest 214:15 highlighted 145:7 169:2,4 169:13,16,19 211:12,12 hire 32:4 194:12 hired 32:6 36:16,18 58:13 199:6 200:18 history 14:16 87:5 91:16 134:24 187:5 193:25 195:23 hockey 6:24 hold 54:22 142:2	holler 97:11 hope 54:9 hopefully 109:15 155:6 hoping 125:3 160:18 166:20 166:23 hospital 118:3 225:4 hospitals 95:19 hour 2:6 8:7 92:3 hourly 62:18 62:19 hours 155:3 house 101:8 179:20 household 87:6 housekeeping 94:8 hr 100:17 101:8 200:23 huge 36:25 huh 116:2 hum 8:10,16,16 17:17 22:8 40:19 73:6,20 74:13 122:1 146:18 157:17 216:21 human 31:17 31:18 32:1 95:20,21,22 101:24 131:7 197:19 200:20
h			
half 101:16 halfway 76:8 hand 151:22 202:20 226:18 handed 11:4 70:12 handwriting 126:22 129:4 140:6,11 handwritten 5:22 123:25 166:17 handwrote 157:23 happened 23:10 29:11 115:13 happy 8:5,8 221:21 hard 112:6 128:19 131:5 harm 29:6 39:3 39:5 41:12 45:22 49:14,21 52:12,18,22 59:18 69:22 harmed 53:20			

[hurt - information]

hurt 156:16	96:5 119:20	income 65:16	individual's
hz 1:7	132:2 142:5,12	65:16 205:9,16	29:6,18 203:24
i	180:6 207:11	206:11,20	individuals
i.e. 95:2	impression	incorporate	16:8,20 17:14
ice 6:24	136:6 175:16	171:16	28:14 45:21
idea 166:13,13	improper 41:3	increasingly	224:25
166:16	41:20 78:2	178:18	industry
identification	improve 130:7	increments	102:12
16:14,15	inability	224:7	influencer
identified	203:15	incurred 62:7	50:15
11:14 15:11	inaccurate	indeeds 96:12	influences
69:2	67:22 68:4	independent	125:1
identify 35:2	incidents 48:23	209:11	info 160:15
68:3 97:7	include 54:6	independently	inform 209:17
107:10 130:6	69:19 73:23	127:14 147:3	210:24 211:22
144:20	75:10 76:17	148:15 149:11	212:1 215:18
identifying	82:10 101:12	153:5 188:14	informal 60:17
48:5 69:14	111:25 112:13	index 4:1	60:18 92:21
84:20	122:10 171:16	indicated 49:8	informally
imagine 200:23	182:15	49:15 187:17	108:9 187:18
201:1	included	187:22 188:1	187:23
immediately	117:16 122:4	189:25	information
14:6	213:18	indicating	30:21 36:22,23
impact 9:7	includes 18:7	49:24 174:18	46:6 54:6 64:7
29:18 130:21	18:13 192:3	207:6	82:24 83:13
131:10,21	200:21	indication 79:2	84:17 87:4,23
132:11,13	including 14:16	individual 1:11	88:2 89:16
133:6 134:9	18:4 27:17	1:12 14:25	102:24 106:19
198:8,21	29:2 75:5	15:18 16:17	108:20 109:9
impacts 132:3	93:19 161:11	96:1 100:19	109:17 110:6
impeach 7:23	165:3 175:13	101:17 118:21	110:13 111:2
impetus 128:6	177:1 183:16	124:21,24,24	116:8 119:9
important	192:25	128:15 203:23	122:10,15
12:11,13 74:17	inclusive	219:7 225:1	124:21,22
79:14 91:5	226:12		125:2 127:12

[information - invasive]

128:8 129:18 131:19 132:5 136:2,17 144:11,14 146:1,22 147:4 147:4 148:8,14 148:16,23,25 149:2,13,23 150:8 151:3,3 151:11 152:14 152:19,23,24 153:1,6,24 156:12,17,20 156:21,25 157:7 158:23 159:23,25 162:20 200:4,7 201:2 204:11 214:21 216:10 217:23 218:3,9 221:12 informational 69:14 informed 30:10 103:19 informs 30:7 initial 20:23 35:11 115:17 139:14 152:2 155:23 168:3,6 initially 15:8 16:21 52:12 144:6 injured 55:25	injury 16:22,23 16:24 69:21 input 137:11 inquire 35:6,7 inquiry 72:2 131:12 insecure 178:17 inside 151:9 insignificant 184:6 instances 178:9 institution 117:22,24 137:19 174:14 174:15 209:14 institutions 193:17 210:16 instruct 34:21 34:22 insurance 14:11 intact 207:19 integrated 160:25 161:19 161:23 162:11 162:16 intend 23:2 33:22 37:21 40:25 41:23 42:4,5,24 interaction 192:11 201:3 interactions 189:23 190:19	192:13 interchangea... 52:19 interest 15:6 132:8 190:10 interested 179:22 186:10 interesting 48:23 interests 7:12 interfering 191:24 internal 144:1 international 11:25 12:18 22:17 23:3 internet 109:19 interpretation 38:3 74:6,17 interrogatories 226:7 interrupt 15:22 17:1 60:4 87:14 89:21 138:12 188:8 198:24 interrupted 22:5 79:9 interventional 141:14,15,23 155:15 interview 15:9 15:9 16:13 17:7,8,11,16 29:8 30:20	41:9 69:14 71:10,22,25 81:10 82:20 85:17,24 87:18 124:8,16 127:21,24 128:17 140:4 185:16 196:22 198:23 223:22 interviewed 28:14 49:24 59:15 124:5 187:1 interviewee 38:22 84:22 interviewing 24:12 35:17 40:9 84:23 186:6 interviews 17:9 36:21,22 37:19 83:12 117:3 124:9 223:19 intimidating 192:13 introduce 222:11 introduced 188:2 introduction 4:7 70:15 invasive 141:14 141:15,23,25 142:3,7,7 155:15
---	---	--	---

[invoiced - know]

invoiced 62:9 involuntarily 189:4 194:21 195:10,12 198:8 involve 43:15 44:8 involved 10:3 57:18 58:21 92:14 99:4 211:25 involves 17:22 iota 185:8 ish 199:23 213:22 issue 48:4 81:6 82:13 179:4,6 issued 170:25 191:9 issues 9:21 24:17,25 25:6 28:5,6 41:13 53:10 69:13 87:10 190:1,8 191:15	jewell 10:6 58:7,18 joaquin 1:11 job 12:22,23 14:2,3 15:11 15:13,15,17 16:18,25 30:10 39:2 41:11 49:19 50:8 54:7 59:17,20 59:24 64:3 65:20 85:22 86:25 88:4 93:5,10,13,14 93:16,18,21,21 93:24 94:1,23 94:23,25 95:1 95:8,8,12,15 96:6,8,9,14,15 96:19,20,23 97:1,13,14,19 98:5,8 99:1,12 101:11 107:14 130:4,8,11,17 162:7 165:18 165:23 174:8,9 181:14,14 194:10 195:17 201:15 216:12 216:14 jobs 15:4 84:21 84:21 87:25 127:5,8,13,24 128:3,9 163:2 198:22	john 104:13 jones 9:16 10:1 56:18,25 judge 60:15 judgment 75:7 76:13 83:24 177:24 julie 2:3 8:24 133:12,16 226:3,23 jump 143:13 jumps 113:5 june 190:2 juror 10:25 jury 41:1,19,24 42:5,9,15,25 43:6 44:16,23 45:4 60:19	kinds 15:7 kleenex 170:19 knew 21:16,21 65:18 119:24 126:7,9 128:7 157:3 162:9 192:4 193:12 194:24 201:25 202:2 know 7:2 8:8 9:9 10:16 21:10 25:12 29:10 36:20 37:11 38:24 39:2,8 41:9,16 42:12 43:8,17 43:21 44:1,3 44:21 45:7,17 45:25 46:3,5,7 47:7,8 48:24 49:10 50:12 52:13 53:24 54:10,12 59:11 60:11,16,24 61:15 62:10 63:1,4 66:14 67:5,7 68:5 69:21 74:21 75:1 77:1,2 78:5 80:13 81:24 82:11 84:2 85:8 87:5 87:12 89:2 94:14 96:25 98:1 100:5
j		k	
j 210:6 jai 210:5 january 1:18 2:6 6:7 226:19 jennifer 65:23 65:24 66:8,9 66:11 165:3,11 220:7		keep 21:2 47:7 47:8,20 50:20 60:5 63:9 65:19,20 139:2 159:12 keeping 59:20 kept 123:25 kill 211:7 kind 20:3 28:25 50:8 64:17 66:10 67:5 130:24 136:1 140:21 159:7 174:4 182:3 207:15 225:9	

[know - letter]

102:18,22	165:17,25,25	I	leadership
103:11,24	166:24 169:2,5	I 81:15	21:20 22:12
104:1 105:3,7	169:21 172:13	lab 178:4,25	192:8
105:8 106:25	172:19,22	187:9	learn 110:20
107:12,21	173:13,19	label 202:19	116:6 179:23
108:23 110:13	174:10 175:14	labeled 179:14	181:13
110:16 112:6	179:12 180:25	labor 15:14,15	learned 37:5
113:13,23	181:7 183:2	16:15,16 17:13	204:5
114:10,15	184:4 188:5,5	64:9,10,11	learners 192:12
116:9 117:1	189:3,7 193:9	71:11 72:2	learning
118:3,7,9,13,20	193:23 194:20	81:15 83:3,16	192:14
118:23,25	194:20 196:20	85:7 87:23	leave 86:1,18
119:7 121:5,24	204:17,18	91:25 107:25	214:15 223:5
123:17 124:16	207:15 209:20	138:7,8,10	224:12 225:14
125:10,11,11	209:21,25	214:20 216:9	leaving 39:4,4
125:12,15,18	211:4 217:19	lack 132:8	86:15 203:7
128:4 129:12	217:25 219:11	156:16 178:2	209:2
129:15,25	219:12,13	landscape	lecture 179:7,8
130:1,15,22	221:16,18,19	146:21	led 125:16
132:3,3,16,17	221:20,24	languages	lee 210:5
133:3 139:10	223:2,10	87:12	left 49:11 59:24
139:18 140:19	knowing 16:3	large 36:25	65:23 66:7
141:13 142:6	113:3 116:13	88:6 113:4	72:23 85:22
142:10,12	186:15	120:15,16	181:17
143:4,15,19	knowledge	125:3	leftover 213:14
145:4,16,19,20	14:17 63:15	larger 200:21	legal 3:11,13
146:13,20	68:24 91:9	law 2:7,18 6:6	25:13,16 32:3
147:14,25	117:11 119:4	lawsuit 10:23	44:23 45:25
149:4,15,15,18	187:17,22	124:25 166:21	46:3 47:9
150:24 153:16	214:12 216:14	187:18,23	lens 53:20
153:19 154:3,6	218:19,21	lawyer 45:18	lent 159:2
154:9,12,12,16	knows 87:12	lawyers 103:7	lessened 67:6
156:8 158:15	174:10	111:16 207:14	lessening 67:6
159:3,5 161:14		lay 10:21	letter 4:3 5:16
161:21 162:24			5:20 188:18

[letter - looking]

200:16 letters 95:14 210:2,4 level 19:12 20:17,17 169:8 179:7 192:19 205:16,20 levels 102:14 215:8 218:16 219:4 licensed 12:10 life 9:6 88:11 lifestep 64:6 lifted 82:1 likely 61:4 136:24 138:2 138:13 154:1 166:2 185:7 limited 101:20 182:24 line 127:4 155:9,13 lingo 49:10 link 153:21,24 166:2 171:10 171:14 lisa 1:16 2:3 6:4 6:10 62:13 141:16 155:1 160:12 226:4 lisa's 144:8 list 16:12 17:1 29:21 54:15,19 68:16 76:17 81:5 84:1	102:22 103:1,6 103:7,15 104:13,25 105:24 109:5 113:3 211:3,17 listed 30:24 31:12 63:20 64:3 109:9 206:7 listing 75:11 lists 72:25 literature 89:18 90:12 little 8:20 13:20 69:6,13 78:11 92:2 109:4 118:16 123:5 143:10 157:13 166:5 173:9 174:4 179:1 202:11 208:3 live 96:4 lives 87:13 167:1,2 living 87:8 location 96:5 log 110:23 148:21 150:13 logged 148:20 149:12 long 8:4 20:3 20:10 38:5 48:19 50:11 83:22 169:7,9 174:13 200:9	216:13 longer 200:13 221:14 223:24 longshore 21:24 look 10:14 15:13 16:22 25:13 27:18 28:17 29:20,23 33:14,15 44:4 54:24 58:22 70:24 72:8,16 74:20 82:23 83:11,12,12,14 87:3,25 88:3 90:13 96:2 107:21,22 109:21 111:5 113:11 119:20 119:21,24 120:7,12,25 124:3,19 138:19 143:4 146:10 147:16 147:16 149:3,6 150:3,4 151:9 151:14,18 154:5,9,14 155:2,14 156:6 156:22 157:24 159:16 160:13 160:17 162:2 162:18 166:15 180:22 183:19 183:20 185:1,7	187:5 189:18 191:11 194:12 202:7,23 206:13 211:4 211:23 218:20 222:4,9 224:9 225:1,9 looked 26:11 28:2 29:20,21 30:22 59:15,15 64:2,5,5 72:11 72:13,14 76:6 85:2 88:5 97:23 98:2 103:3 109:13 109:14,15,17 111:20 112:11 116:16,17 121:2 131:20 138:7,19,21 147:18 148:10 149:17,20 156:8,12,21,25 157:9 168:3 170:14 175:15 181:15 182:4 184:20 185:5 186:19 191:12 212:14 219:21 221:20 looking 11:9 15:3,4 29:2 42:12,12 50:3 52:1 64:11 69:15,18 71:9
--	---	--	---

[looking - marks]

73:14 75:3	211:10 213:6	131:9 135:24	216:3
80:13 95:12	225:6	180:7 186:18	manifesting
110:10 111:19	loss 24:19,21	189:20 206:5	178:1
113:3 129:25	39:5 40:12	206:19 210:6	manuals 63:17
130:20 142:8	41:7 52:7	213:6	marginal 178:1
148:22,22	53:11 60:9,22	maintaining	marital 18:4
150:21 155:21	61:18,22 69:16	181:3	mark 74:22
157:14 159:6	80:23 121:11	maintenance	122:22 144:17
160:24 162:9	205:9 206:11	85:23	144:19,24
164:21 170:19	206:12 208:16	majority	146:7 214:15
172:17 183:17	212:6 213:8	199:20,25	marked 11:3,5
187:15 195:22	lost 60:1 112:9	make 10:10	70:5,10,12
197:5 198:7	112:9 128:18	15:15 30:4	86:7 113:17,24
211:6 212:14	218:10	38:24 41:15	120:9 122:23
looks 11:13	lot 12:21 18:8	94:9,18 101:16	123:10,12
18:8 23:9	20:14 28:4	113:13,16	144:22 145:1
56:20 58:7	43:9,12 49:23	117:18,21,25	146:6,8 177:6
59:10 62:17	67:12 83:16	119:25 124:17	183:22 189:11
64:22,22 73:1	87:6 93:21	130:3,24	191:6 222:14
124:4 127:23	96:12,19 97:4	132:18,24	225:24
128:3 129:3	143:8 175:22	136:22 149:20	market 15:14
134:19,23,24	179:1	156:23 157:24	15:15 16:15,16
134:25 139:4	lots 210:7	159:1 169:21	17:13 71:11
141:12 144:5	loud 177:19	181:20 214:14	72:2 81:15
144:13 146:12	189:19	216:23,24	83:16 87:23
151:19,20	low 189:25	221:23 222:2,6	91:25 92:1
152:21,22	lower 158:16	225:8	93:5,10,13,17
154:5,10 155:5	183:22	makes 12:8	94:1,23 95:1
155:12 156:4	lunch 92:7	39:6 215:10	96:1 97:13,14
159:22 160:11	123:8,12	making 58:16	97:19,22 98:8
161:6,17	138:21	117:18 140:14	99:2,13 100:10
162:23 163:9	m	156:17 158:3	markets 93:14
164:9,15 165:1	m 70:1	178:19,23	94:24
165:17 166:1,7	made 49:16	179:22 180:12	marks 73:10
166:10 191:15	86:21 114:5	209:8 214:17	114:5

[marriage - methodology]

marriage 18:10	149:8 158:1	73:2 80:20	20:20,21 39:1
masonry 56:12	159:4 166:15	85:21 87:10	56:19 57:10
master's 12:14	167:18 173:3	88:2,10 111:17	65:21 86:11
14:7,8 46:19	173:11 174:5,6	111:21,22,24	100:25 103:6
matches 124:21	174:9 184:1	137:19 174:14	109:20 110:1
material 61:12	187:23 188:8	187:10 209:13	135:19 149:16
99:19 107:21	197:2 198:5,24	210:16 220:12	188:2,11 207:1
107:22 179:7,8	208:22 213:1	220:25 221:1	215:5 218:13
materials 59:16	214:4,7,8,16,21	223:5	226:5
59:16 63:25	216:2,3,25	medication 9:6	message 129:23
matt 144:7	217:22 221:23	medicine 144:1	140:12 160:9
matter 6:5	224:4	155:16 185:17	met 7:3 21:12
13:11 24:15	meaning 156:5	186:7 187:8	36:20 167:9
62:7 131:25	172:17 176:20	225:5	178:13
132:1 181:9	meaningful	meet 15:5	method 69:11
192:2 222:22	179:10	meeting 34:8	73:12 77:22,24
matters 18:13	means 52:23	34:11,12 36:10	77:25 78:6,6
18:21 22:25	63:5 76:10	36:10	methodologies
81:6 82:13	81:10 113:10	megan 3:5	16:9 17:3 19:4
matthew 2:13	113:11	member 192:1	19:5 26:22
2:14 6:6 70:8	meant 52:21	204:4,19	73:24 75:5
mc 105:13	63:12 167:10	memberships	76:1 77:2 89:2
mccrae 55:11	measurement	147:15	89:15
55:14,20,25	73:2 86:20	memory 9:7	methodology
md 5:9 225:1	measures 76:24	33:16 59:11,12	16:6 26:9,16
mean 10:2 13:4	med 141:15,15	135:16 138:1	69:7 71:18
13:4 25:4,16	medaxiom	139:12	73:21,22,23,25
34:23 45:19	102:19 108:21	mental 131:1	75:4,10,14,16
46:19 52:20	159:23 160:24	132:13 133:19	76:16,21 77:13
63:16 79:15	161:22	134:1,7	78:19 79:15,17
81:9 85:19	median 158:2	mention 69:23	79:25 82:1,14
92:6 93:7,23	214:21	101:2 132:16	83:21 84:7
97:15 113:9	medical 4:18	176:22 194:7	85:5,10 86:4
115:13 121:5	4:20,22,24 5:2	mentioned 17:7	88:13,21,23
127:19 136:13	5:4,7,18 52:6	18:7 19:11	89:13,19 90:11

[methodology - nature]

90:22 91:6 131:14,23 214:18 216:5 218:10 methods 78:7 80:22,24 91:20 mgma 31:6 102:19 106:15 106:20 108:25 153:16 154:24 155:25 219:23 220:13,17 middle 179:14 187:6 military 85:19 million 166:11 206:15 208:16 208:25 mind 50:14 99:25 104:20 112:17 123:4 125:5,7 133:13 184:11 mindful 15:23 mine 146:14 minimizes 74:5 minimizing 74:16 minimum 115:14 minnesota 7:2 160:20 minus 206:13 minute 33:15 87:15 137:6	159:12 195:8 196:5 224:7 minutes 92:4 139:1 224:4 miracle 6:24 mis 78:21 misheard 159:21 mispronounc... 6:19 56:6 misreading 197:24 missed 113:7 225:6,6 missing 38:9 55:12 64:21 150:25 214:23 misstate 79:2 misstatement 25:19 misstates 40:1 42:18 77:7 78:3 80:1 84:12 88:15 134:12 mistaken 181:16 misunderstood 153:20 model 4:7,8 26:12,13 70:14 70:15,19 74:4 78:14 81:15 82:20,21,21 83:2,9 85:7	86:2,2,6,12 models 78:18 82:17,22 83:23 84:10,15,19,19 85:11 90:24 91:22 102:25 117:8 module 72:7 73:18 modules 71:2,6 71:13 moment 10:15 43:20 45:24 49:11 67:24 80:12,14 110:21,22 116:18 118:10 123:7 136:15 147:25 159:17 189:10 196:12 money 106:21 117:18,18,21 117:25 124:25 125:4 monitor 16:19 month 213:16 months 50:1,2 63:2,3 163:14 177:17,22 182:5 moody 165:3 165:12 220:7 moody's 165:19	morning 6:16 6:17 morph 64:15 morphed 64:13 motivation 130:15 move 15:6,9,19 101:22 197:1 212:16 moving 60:5 139:3 159:12 multicultural 46:20 multiple 27:7 170:4 178:7,8 182:22 multiplied 206:18 multiply 206:14
n			
n 6:1 name 7:3 58:18 63:5 66:14 102:16 110:16 110:16,23 165:19,19 188:5 210:5 names 165:5 nasw 47:14,18 national 47:14 natural 112:7 nature 9:20 40:11 55:23 172:8			

[neal - nutshell]

neal 6:25	182:12 183:9	north's 104:19	november
near 158:6	183:16,18,19	165:19	140:9,17
nearly 45:17	184:15 194:9	nose 170:20	164:15,25
179:21	194:14 201:12	notation	165:24
necessarily	201:17	140:14	number 4:2
17:13 40:11	neglected 94:8	note 38:23	79:6 82:23
44:10 118:1	net 64:5	39:17 75:25	84:18 123:22
156:24 194:10	network 95:10	119:12 125:23	127:14 128:10
211:16 218:15	never 112:17	125:23 126:20	134:24 138:5
219:3	132:24 166:22	127:20 128:13	144:9 163:4
necessary	166:22 184:11	141:19 161:6	166:5,10,12,16
81:20 181:12	new 116:22,24	162:23 164:9	166:19,23
216:13	116:24 117:1	200:17	199:17 205:11
need 8:6,7 20:1	119:9 178:24	notes 4:16 5:22	205:12 208:17
30:13 39:7	178:24 221:12	74:22 113:16	208:20,25
53:25 54:6	221:16	114:3 123:14	212:24 215:8
55:17 79:17	no's 49:23	123:25 124:4	221:5,14
86:22,23 87:2	nods 8:16	126:21,24	numbered
88:10 104:3	non 49:13	127:1,20	123:17
112:2 114:4	65:17 94:1	128:12 134:20	numbering
116:25 125:24	96:9,18,24	135:4,9 137:22	125:22
144:8 180:25	141:15 142:7	137:23 139:4	numbers
200:19,20	nonexemplary	140:5 152:21	121:21 123:19
207:8 211:4	180:23	159:13 160:8	148:16 158:11
221:16 222:4	nonrenewal	163:10 164:15	158:12,17
224:12 225:19	196:6,18,25	165:1,14 166:4	159:11 169:2,3
needed 15:8	202:1	166:8,25 170:8	169:13,16,16
126:7 156:11	nope 217:13	206:14 207:1,2	169:25 170:2
161:21,24	nora 167:19	207:3,11,11,21	207:22 208:21
needing 141:20	171:8	214:10 224:10	213:13
162:18	normal 130:17	notice 201:25	numerous
needs 55:5 73:2	north 21:10	notification	192:24 193:9
88:3 179:10	22:11 104:15	20:18	nutshell 27:1
negative	165:4,12 220:7	noting 182:18	134:16
175:25 180:14			

[o - okay]

o	216:13	office 2:18	225:2
o 6:1 64:5	obtaining	31:10 47:23,25	ohsu 3:11,13
oath 6:12 7:25	59:20 132:9	66:4 123:19	6:5 7:4 24:18
8:1 34:4 37:14	obviously 36:5	155:4 171:2	25:2,11 26:4
226:6	50:12 67:16	173:17 207:19	26:17,24 29:22
object 89:23	92:7 137:24	207:20	32:16,23 33:6
133:8 193:3	141:5	offices 2:8 6:6	33:13,24 37:23
198:2	occasion 21:22	offset 209:1	38:18 39:4,4,5
objection 23:23	23:13 24:11	oh 6:21 15:24	39:11,25 41:2
27:7 30:14	34:7 61:3,7,9	18:17 25:9	48:22 49:15,25
40:1 41:3	61:21 90:4	36:18 39:14	51:5 52:6,13
42:18 43:1	92:23 93:1	40:4 55:1,2,7	53:21 129:21
44:17 45:1,5	98:7 99:1	55:19 57:10,24	131:21 133:6
50:18 77:7,18	108:4 141:3	58:15 63:2,16	134:8,25
78:2,21 80:1	189:14	64:6 66:22	135:10 136:7
82:5 83:6,20	occasions 98:24	72:12,14 73:8	136:19,25
84:12 88:15	201:11	74:11,24 75:13	137:10,14,16
89:21 107:18	occupation	90:16 104:15	138:4 174:7,10
120:2 134:12	16:14 64:8	105:5,15	174:11 175:5
135:5 184:7	96:3,3 219:8	114:21,23	175:13,15
198:2,16	occupational	122:18 123:6	176:18 177:5
objective	64:2,17	126:23 136:2	180:17 183:12
193:20	occupations	136:11 139:22	184:14,22
observation	12:24 64:14	140:17 153:15	187:18,23
134:6	occur 29:18	153:19 155:12	190:23 192:23
observed	october 139:16	160:17 166:22	194:16 195:12
184:22	140:3 141:12	172:6 173:6	196:5,6 201:12
observing 29:7	141:20 163:7	181:20 182:17	201:17,23
obtain 20:1	odd 49:4 159:7	188:8 189:24	203:7 209:2
26:8 49:14	offer 101:20	198:24 202:11	210:15,17
59:24 132:4,14	190:8	202:13 203:14	okay 7:1,16 8:9
166:20 200:5	offered 28:3	206:24 210:22	8:18,25 9:2,2,3
obtained 14:5	29:24 138:20	211:10 212:2	9:5,10 10:9,13
82:24 83:14	190:7	217:6 220:3	10:19 11:2,8
111:13 200:5		223:12,20	13:14,20 16:13

[okay - open]

17:1,2,7 18:18	78:10,17 79:8	134:17 136:2	188:6,11
18:25 19:1,10	79:11,19,21	136:11,11	190:18 191:14
19:22 21:22,25	81:4,22 82:23	137:5 138:16	196:11,17
22:5 24:1 25:9	86:9,15 87:1	139:3,9,18	198:25 199:23
25:18,20,23,25	87:22 89:12	140:20 141:2	202:13,17,20
27:2,9,20 30:6	90:6 91:4 92:2	142:25 144:17	203:4,9,23
31:3,11 32:21	92:19 94:17,19	145:9,16	204:17,25
33:9,19,20	94:20 95:5	146:16,16,17	206:17 207:7
34:1,15 35:21	96:7,16,21	147:1,7,23	207:17,19,21
37:1,3,10,14,16	97:10,21,25	148:7,13,19	208:5,11
37:18,20 38:9	98:10,13,23	150:2,6,13,13	210:13,20
40:6 42:4,9,15	99:15,21 100:4	151:1,10,12	211:22 212:4
43:17 44:5,11	100:8,13	152:1,5,9,12,18	212:17,22
44:22 45:15	104:10 106:1	152:20 154:2,7	213:4 215:23
46:22 48:9,21	107:1,12,20	155:18 156:4	217:7 218:7
49:19 50:25	108:8,12,12,23	157:25 158:21	220:14 221:10
51:10,12 52:25	110:1,6 111:5	159:7,10,21	222:3,11
53:8,12,16,24	111:19 112:16	161:6 162:1	old 64:4 66:18
54:10,21 55:1	112:22,25	163:1,6,22	ology 98:18
55:4,5,7,16	114:7 115:11	165:11,14	once 15:11
56:3,5,8 57:14	115:24 116:1,5	166:4 167:4,13	59:23 101:19
57:17,24 58:15	118:13,18	167:24 168:21	101:21 110:25
58:20,25 60:2	119:16,20,24	168:24 169:18	131:8 136:21
61:1,16 62:1,6	120:14,17,24	170:3,10,24	148:20 150:13
62:9,12,16	121:25 123:3	171:20,24	153:6 166:24
63:4,10,24	123:21,22	173:7,22	ones 102:17
64:24 65:21	124:4,8 126:9	174:16,19,25	103:23 145:20
66:19 67:9,22	126:13,16,19	175:10,16,25	ongoing 20:25
67:25 68:24	126:24 127:1,3	176:10,14,22	54:1
69:5,23 70:24	127:11,23	177:1,4,13	online 147:2,16
71:15,17 72:12	128:2,6,18,25	179:3,13,24	147:18
72:19 73:7,9	129:8,13,13,16	180:3 181:20	open 18:1 82:8
73:11,21 74:20	129:20,25	182:17 185:8	125:14 224:12
74:24 75:3,17	132:10,23	186:4,8,15	225:14
75:18,19,24	133:1,20 134:3	187:15,21	

[opine - page]

opine 24:25 25:10 29:17 52:11 59:4 opined 33:22 196:8 203:4 opinion 22:24 23:1 24:18,21 26:2,6 27:24 28:10,21 29:12 29:25 30:17 32:15,18,21 33:5,12,23 37:21 38:2,16 39:9,9,15,24 40:5,7,10,15 41:1,7,17,23 42:10 43:24 49:12,17 50:16 53:11,12 58:21 61:22 68:4 72:5,24 73:4 73:14,18 74:9 80:7 85:1 88:8 96:23 116:15 116:17 130:9 132:1 134:6 142:12 172:25 173:4,20 174:8 180:20 181:5 181:22 182:6,9 182:14 190:16 194:3,5,8 195:16 196:1 198:1,1,7,12,15 198:20 201:16	204:6 209:17 210:24 211:22 212:1 214:11 218:14 219:5 219:17,21 220:2 opinions 12:6,8 13:8 33:10 34:19 35:4,25 36:13 37:7 52:18 53:1,9 53:19 63:25 68:20 69:1 74:4 103:20 108:17 114:9 124:1 125:9 136:23 137:8 145:14 151:4,6 159:1 173:13 174:11 189:16 193:14 194:25 opportunity 27:18 37:13 39:20 67:15,18 117:20 opposed 185:25 opposite 21:23 oral 226:7 order 91:17 138:17 oregon 1:2,8,9 2:1,5,9,16,21 3:7 6:7 11:16 14:19 15:13 47:11,15 64:8	215:11,13,15 216:10 226:18 organization 21:12 45:20,21 66:3 102:21 117:17 118:21 190:11 original 115:9 115:15,16 ostrofe 167:9 167:19 168:1,7 168:14,25 169:24 170:5 171:21 172:2,4 172:6 208:7 outset 21:5,6 outside 84:4 overall 178:3 178:20 overexaggera... 49:5 overlooked 64:24 own 32:10 76:21,21 77:3 77:13 89:25 111:13 114:3 146:13 147:19 157:7 161:13 203:13 214:19	62:1 63:10 64:19 68:9 69:5 70:25 72:8,23 73:3,3 73:12 75:3,13 77:14,25 109:4 113:11,12 120:20,23 121:22,25 123:22 124:12 125:21,23,23 126:19 128:25 129:6 130:20 134:19,19 139:4 140:5 144:5,5 145:1 152:21 154:2 157:14,15,16 158:8 159:13 159:15,22 160:8,15 161:17 162:2 162:22 164:9 164:10,24 165:14 166:2,5 166:5 172:18 174:25 177:13 179:13 185:12 187:3,6 192:11 202:20,22 205:3,6,8 206:4 208:14 211:10,14 212:4,12,13,19 221:3,22,25
		<p style="text-align: center;">p</p> p 6:1 81:15 pace 179:11 page 4:2 11:10 11:10,12 55:13	

[pages - performing]

pages 68:16 69:3 109:10 151:23 158:12 205:1 226:11 pai 211:14 paid 117:8,13 pam 65:22 66:4 paper 145:5 paragraph 11:11,11 52:3 53:4,6 73:16 75:11,15,16,25 76:9 86:10 155:19 175:2 177:15 179:15 185:13,14 189:18 205:18 208:19 209:8 212:18,20 213:12 221:5 paramedic 66:6 paranoid 178:6 178:18 182:20 part 20:24 24:23 30:7,12 38:8,9,10 39:15 40:11 62:24 73:25 75:1,24 78:9 79:15 80:5,21 83:17 84:9,16 85:18 88:23 89:14 95:22 101:3 102:1 103:10,24	120:15 130:5 130:23 132:25 138:10 143:24 178:14 187:21 188:17,24 194:1 206:17 207:5 216:24 222:13 participated 46:11 participating 23:24 participation 88:11 particular 43:14 203:23 particularly 124:24 219:1 219:18 parties 29:22 35:3 partly 29:14 65:19 83:15,15 parts 73:22,23 130:15 party 10:23 58:19 passed 20:12 20:13 152:7 passing 198:10 password 110:15,24 past 21:15 32:7 87:4 91:18 92:3 124:10,19	pasted 208:3 path 135:22,22 135:23 patient 203:18 203:21,22,24 204:6 patients 177:25 190:10 pattern 177:23 193:16 pause 205:11 222:15 pay 88:1 105:10 pc 2:13 peacehealth 100:16 peer 20:9,23 21:5 88:14,22 89:13,17 90:12 138:20 209:23 209:23 peers 190:22 penalty 8:1 penn 112:25 pennsylvania 5:15 175:6,13 175:14,18 176:1,12,19 177:2,9 180:11 180:17,18 181:5 182:8,18 183:12 184:20 190:23 192:24 194:16 202:8	people 12:24 20:14 57:5 105:20,21 130:4 135:11 135:24 179:22 181:13 percent 17:25 18:2,6,15,20 65:12 137:7,10 137:11 percentage 17:21 18:12 percentages 108:18 percentile 158:2,6 159:4 206:3,9 208:22 213:2 214:5,10 216:2,25 217:20,21,22 percentiles 159:3 214:21 perfect 7:3 perform 12:6 15:18 31:1 51:16,19,22 53:9 60:21 69:10 93:1,14 100:20 performed 59:13 71:18 performing 27:11 53:18 68:19,25 69:13 91:10,21 93:25
---	--	--	---

[performing - please]

94:2 108:16 120:25 145:14 159:25 185:18 190:14 193:12 performs 84:24 period 154:25 160:15,16 189:24,24 197:7 perjury 8:2 persistent 179:4,6 person 14:20 36:10 45:22 57:5 66:7 81:6 84:22 130:12 188:4 216:11 person's 91:15 204:5 215:7 personal 38:23 40:11,15 69:21 personality 49:4 130:13 131:25 personally 40:7 178:24 persons 20:5 49:23 82:13 99:19 130:17 perspective 199:1,16 pertain 164:16 pertaining 102:11 103:15 176:11 201:11	pervasive 191:24 phone 129:11 129:22 154:8 223:24 photo 151:20 152:10 photos 151:21 physical 15:16 physician 4:12 5:6 57:18 59:2 61:5,23,24 86:24 92:20,24 92:25 93:5,9 93:13,16 94:1 94:1,22,23 95:1,8,9,11 96:8,9,18,23,24 97:2,3,13,14,19 97:22 98:7,8 99:1,12,17 100:9 102:9,11 106:11 108:2 108:15,24 109:16,22 110:8 111:12 112:12 117:13 117:20,22 118:21 119:6 120:19 126:2 148:3 177:16 177:21 178:18 190:7 211:15 219:1 220:16	physician's 119:1 218:14 physicians 57:20 96:4 100:14 102:14 111:24 117:7 122:6 218:22 219:1,11,17,18 pick 8:16 169:3 picked 104:3 picking 200:24 picture 125:19 piece 24:20 53:13 82:10,12 85:19 117:23 pinnacle 5:5 111:22 220:10 220:11,11,12 220:13,15 pinpoint 46:17 67:23 108:21 209:20 place 75:24 226:5 placeability 26:11 59:9 88:6 placeable 16:18 placement 16:19,19 101:10,11 places 175:12 192:22 198:11 plaintiff 1:6 2:22 7:10 9:17	9:19 55:21,22 57:13 58:9,10 58:11,13 59:2 124:17,25 140:23 167:7 plaintiff's 167:15 plaintiffs 140:25 193:21 plan 15:1,1,20 15:21 91:23 189:20 190:3,9 planning 88:9 plans 100:17 plastic 55:25 59:3,22 92:14 98:15 99:4 play 119:5 player 6:24 please 6:9 37:10 63:11 68:5 70:9 72:9 73:13 94:18 120:18 126:19 128:25 129:15 134:19 140:5 151:14 155:2 157:24 162:22 163:6 164:13 164:20 174:25 177:14,20 179:5 187:4 189:19 202:8 202:20
--	---	---	--

[plus - prior]

plus 65:6 115:16	positions 199:18	189:20 190:3,9 191:25 215:19	167:5
pocket 170:21	positive 176:21	practicelength	presented
poignant 38:11	176:23,25	166:1	41:13
point 13:15	180:1,9,9,13	practicelink	presenting
14:22 35:22	183:8,15,18,25	96:17	73:12
46:12,20,23	184:2,15	practices 88:23	pretty 18:15
89:18 90:19,25	192:14 193:11	practicing	60:17,18 72:21
91:1 109:23	possess 27:23	95:11	78:13 79:18
111:20 124:12	30:16 143:20	predated 191:1	88:5 132:1
128:7 158:16	177:24	199:24	previewed
158:16 162:1	possession	preliminary	118:19
162:17 198:25	47:22	116:16	previously
203:10 204:22	possible 36:15	preparation	56:19
214:23 222:22	74:10 125:24	66:11 147:12	primarily
pointed 202:25	126:6 137:15	222:19	12:17 13:1
pointing 49:2	200:11	prepare 59:13	14:1 16:13
86:6,6	possibly 32:24	60:22 61:21	30:21 35:17
points 89:2	49:14,17 91:18	99:8 127:1	42:14 59:17
police 56:1,2	165:5	139:19,23	143:18 197:14
poor 183:23	posted 104:12	147:9 157:20	primary 50:15
pops 105:1	104:13	165:9,16,21	principles
portion 30:4	postgraduate	207:12	91:20 97:4
155:22 208:14	122:2	prepared 11:6	print 111:3
221:11	potential 29:6	31:14 67:2	147:22
portions 68:1	61:17 101:22	126:24 139:23	printed 146:2
178:10	107:23 137:8	152:6 222:17	146:13,20
portland 1:3	197:5 203:5	preparers	147:3,19
2:9,16,21 3:7	210:24	99:19	149:12,16,19
6:7 226:18	practice 74:9	preparing	149:22,25
portrait 146:21	76:1 117:13,17	124:1 152:15	152:10 153:8
posed 103:1	117:20 119:2	153:2 157:22	153:24
position 181:3	128:13 162:3,8	172:1	printer 147:21
211:9	162:9 186:1,11	present 3:10	149:20
	186:19,22,25	24:2,9,12 34:9	prior 19:18,20
			23:8 24:12

[prior - providence]

41:8 54:15 67:11 98:8 160:3 175:12 private 4:21 95:18 117:13 117:17,20 161:1,19,24 162:3,7,9,11 172:19 186:1 186:11,19,22 186:22,25 privileged 24:4 proactive 161:16 probably 7:17 8:5 42:8 56:6 58:11 66:15,15 69:12 72:9 113:19 137:22 139:17 140:3,9 155:2 165:7 170:9,12,20 171:8 172:17 189:8 191:5 207:4 problem 199:4 problematic 189:22 190:18 problems 69:15 84:20 199:4 procedure 2:2 54:4 procedures 178:9 203:14 203:16	proceedings 2:7 222:15 226:15 process 7:17 15:3 16:4 20:3 49:8 50:9 72:20 85:24 87:19,20 89:4 89:9,16 99:17 128:19 130:5 137:15 140:12 209:15 processes 143:7 143:13 196:23 produce 140:22 produced 6:11 140:10 product 20:22 production 115:18 productivity 116:11 117:14 117:23 118:1 120:21 121:16 189:25 190:5 192:18 221:11 221:22,25 profession 215:10 professional 2:4 63:6,11,13 63:22 64:19 102:21 professionals 101:25 103:13	203:2 professor 135:2 135:3,11,22,23 137:9 138:3 169:7,8 174:12 187:8 205:9,17 205:20 208:15 212:2 213:7,18 213:19 214:2 214:13 217:17 professors 210:1,7 professorship 212:3 program 101:20 102:8 programs 100:23 101:3,7 progress 215:20 218:23 219:20 progressed 158:14 178:23 progresses 219:8,8 progression 136:18,24 138:3 174:1 210:25 211:23 projecting 121:11 projectory 136:10 138:22 promoted 135:11,25	promotion 135:1,2 136:18 137:9 pronouncing 69:24 propounded 226:7 prospective 200:4,10,14,25 201:3 204:2 prospects 101:14 protected 35:1 35:5 protocols 200:19 provide 30:17 34:17 36:23 37:21 111:23 114:8 122:16 136:15 provided 35:3 35:24 36:1,11 57:1 82:24 83:14 84:16 109:18 110:1,3 110:7,14,15 111:16 112:23 114:9 115:4 123:14 176:12 192:25 194:2 207:14 providence 100:16
--	--	--	--

[provides - rank]

provides 111:23 179:1	158:22 209:5 209:24 217:24	65:7,15,18 66:19 77:10	125:14,15 129:1 132:6
providing 10:19 111:14	222:9	78:23 79:9	144:19 163:10
provocative 178:19	putting 50:5 196:11	82:8 84:6	166:3 202:21
psychometric 12:1,18 22:18 23:3 73:1 86:20	q	89:12 93:12,16	212:22 215:16
public 1:9 4:23	qualifications 27:2,10,15,22 30:15 38:1 143:19 215:7	94:3,9 102:23	222:12 224:11
publication 64:25	qualified 22:13	103:1 104:14	224:17,24
publications 65:1,3	qualifies 28:9 28:21 30:17 38:2 51:19	105:1 107:5	quick 139:4 159:14 164:20 202:3
publicly 157:8	qualify 22:24	109:8 112:5,18	quickly 135:25 160:23,24
publish 220:20	qualitative 15:9 16:13 17:7,11,15 29:8 69:14 71:24 87:18 117:3	114:24 122:13	quit 60:3
published 89:19 90:12 108:25	quantify 181:10	124:13,15	quite 6:20 24:24 116:13 117:1 200:11 206:10
purchase 126:13,15	question 8:18 8:22 12:8 22:22 23:22 24:4 26:22 27:20 30:14 31:18 32:21 34:22 35:10,14 35:16 37:4 38:11,14 39:7 41:22 42:7 44:6,22 48:11 60:7,21 61:1	135:7 138:13	quotations 128:14
purchased 126:12		139:4 147:25	quote 182:19 182:19,23
purely 33:10		148:7,13 149:8	quoted 128:23
purported 201:12,17		160:23 164:4	quotes 128:13
purposes 52:16 55:8 79:22 106:3 162:18		164:23 165:20	r
pursuant 2:1		166:4 167:4	r 6:1 70:1 81:15 226:1
pursue 186:21		168:9 170:17	race 44:8,15 46:7
put 58:18 83:13 84:3 128:14 147:7 157:12		172:13,21	raise 205:23
		174:6 181:2	raised 205:16
		182:6 184:11	rakesh 211:14
		195:6,7,9,15,24	ranji 225:1
		195:24 196:12	rank 205:9,17 205:23 209:9 212:7,19 213:7
		197:3 199:10	
		199:11,13	
		204:12 211:6	
		211:17 218:7	
		questioning 32:14	
		questions 27:8 37:23 39:2 45:10 62:25 71:1 94:14 100:4 103:12 116:20 124:14	

[rank - record]

214:2,3 217:16 217:18 ranks 208:16 rapel 81:12,14 82:2 83:15 85:7 rare 14:24 rarely 140:21 140:23,25 rate 62:18,19 rather 61:17 113:19 180:14 219:25 rationale 178:14 raw 149:14 reach 26:9,23 129:23 206:15 210:15 212:3 reached 20:15 169:8 205:7 212:7 reaching 68:19 69:1 108:16 119:17 213:25 218:4 read 21:13 36:24 38:6 42:1 43:19 46:12 71:5 72:15 74:3 77:12 80:14 81:25 84:8 90:6 100:6 108:19 109:19	118:9,11,12,14 118:17,23 129:14,14,17 130:23 133:13 133:17 154:21 154:21,21 155:10 161:3 161:18 164:6 164:18 177:19 179:5,17 184:1 184:13 189:19 198:6,6 203:9 205:13 reading 46:5 68:21 71:7 78:12 90:2,2 105:24 130:19 130:23 138:6 191:21 reads 125:24 127:4 ready 174:23 real 164:20 realize 50:10 75:20 realizing 50:6 really 13:15 29:10 47:5 48:11 50:14 52:22 62:8,14 65:18 79:14 83:17 88:1 96:22 108:4 130:24 131:5 140:16 145:19	154:4 163:18 166:18 172:20 207:11 realtime 2:5 reask 167:13 reason 9:5 88:18 165:21 reasons 189:7 rebut 219:13 rebuttal 66:12 66:23 67:17 164:17 165:6,9 165:16,21 172:1 185:10 220:4 222:11 222:16 rebutted 165:11 rec 42:12 126:7 recall 43:19 161:20 170:3 recalled 43:22 receive 103:14 127:12 165:6,8 190:3 received 31:7,9 31:9,13 109:7 113:4 151:25 152:2 153:6 171:1 182:7,11 182:14 190:25 191:22 194:15 209:2,20 213:22	receiving 165:2 recent 115:16 recently 67:18 recertification 20:25 recess 34:2 92:9 123:9 144:21 159:9 174:21 202:5 recite 53:25 recognizing 151:8 recollect 37:9 recollection 47:7 139:15 141:4 142:23 155:20 164:24 171:5 181:1 184:18 188:20 191:14 197:21 202:24 recommend 126:5 recommenda... 210:2,4 recommenda... 181:24 recommended 126:10,12 record 6:8 7:3 7:22 8:21 26:1 34:4,24 39:17 40:2 48:12 67:13 75:1 84:8 86:5 92:8
---	--	---	--

[record - relied]

92:11 120:18 123:7,12 127:12 133:4 144:18,19,24 154:20 174:23 186:9 195:23 195:23 202:7 222:13 223:19 226:13 recorded 223:22 records 41:11 42:13 47:20 48:1,13 68:8 68:10,14,17 69:2 71:9,10 71:19 85:17,25 91:19 109:5 112:23 123:13 123:23 124:19 124:19,22 127:10,15 128:8 149:7,9 149:10 183:11 recruiter 95:22 101:18 102:8 recruiters 93:20 95:2,16 95:17,19,19,21 95:24 96:10 100:15 101:8 220:16 recruitment 100:9	reduced 226:10 refer 13:18 44:3 124:15 183:1 reference 58:16 63:25 69:6 70:25 86:9 106:25 130:3 136:22 171:13 173:2,6 180:8 185:9 190:18 210:6 referenced 68:7 68:14 180:4 210:20 213:24 218:19 223:5 references 20:4 143:24 196:5 198:10 200:11 201:12,17 referencing 123:1 referral 210:4 210:6 referrals 18:23 20:5 referred 105:12 109:14 referring 68:13 70:21 80:25 104:8 105:22 106:2 107:2 109:24 123:23 126:2 146:4 162:24 187:6	207:2 reflect 42:2 reflected 214:25 reflective 192:18 refresh 47:6 139:15 181:1 191:14 refreshing 164:23 regard 195:5 regarding 24:18,18,21,25 25:7 40:8,10 49:4,25 125:15 134:8 166:3 168:5 172:21 201:2 regardless 35:1 128:6 regards 24:17 25:7,14,15 28:5 49:1 region 197:2 registered 2:4 regularly 93:14 regulating 119:5 rehab 12:19 13:6,6 14:4,5 16:4 43:10 65:11 103:8 218:1	rehabilitation 4:6,10 11:15 13:22,24 17:4 17:23 26:12 70:14,16 71:10 71:22 72:4,24 73:17 83:22 85:17 87:17 88:8 102:2 reimbursed 118:25 relate 106:6 165:15 215:24 related 99:17 114:11 164:16 192:2 relates 97:13 97:22 99:12 100:9 relating 97:18 relation 74:1 215:24 relationship 190:12 relative 118:14 release 200:22 201:4,4 relied 34:16 35:12 37:7 38:1 68:25 106:1,16 107:4 108:2,15 111:11 128:9 145:18 148:8 148:14 151:4
--	---	---	--

[relied - reporter]

159:16 171:17 210:23 rely 26:9 63:24 68:18 91:20 102:12 107:13 111:25 145:13 152:14,19 153:1 159:25 214:17 216:5 218:9,14 relying 12:7 remain 208:15 remained 136:25 137:10 137:16 138:3 185:16 190:5 remedy 49:16 remember 9:11 9:14 10:14 23:21 45:14 47:4,5 50:22 55:23 59:25 60:3,8,8,24 61:14 104:10 104:11,24 110:12,20 112:20 114:6 120:5,15 126:17 130:22 135:20 136:12 146:21 151:2 164:2,22 168:23,24 171:20 172:21 173:16,21	175:25 183:13 183:14,21,22 186:2 188:22 188:23 189:8 190:13 210:11 223:7 remembered 2:1 remembering 174:4 reminded 54:5 remotely 3:12 3:14 render 12:7 23:1 26:2 27:11 28:9,21 53:2,9 61:21 rendered 53:11 53:12 58:21,22 194:25 rendering 190:16 193:13 renders 27:3 renewed 49:10 49:13 195:11 repeat 118:17 160:12 repeatedly 89:22 rephrase 41:22 77:10 94:10 135:8 reply 197:21 report 11:6,10 11:10 20:21	24:13 30:4,25 31:5,15 33:1,8 33:14 35:12 39:10 45:13 47:12 51:1,12 51:16 52:2 53:6 54:2,8,12 55:10 57:2,6,7 58:22 59:10 62:1,25 66:12 66:12,20,24 67:15,17,18,22 68:9,17,23 69:3 70:21 74:21 75:3,13 77:12 78:1,13 80:22 86:10 90:3,7 92:18 99:8 102:17 104:19,23 105:3,4,11 106:4,9,17,24 107:2,6 108:3 108:9,13 109:3 109:10 111:18 112:1 113:7,14 114:4 119:8,12 119:18,22 121:22,25 124:2,16 130:25 132:16 133:1,4,25 136:22 137:24 143:23 151:6 151:17 155:6	157:12,16 159:15 160:13 160:18,25 161:3,8 163:8 163:9,23 164:3 164:17 165:16 165:22 168:3,3 168:6,16,19 169:4,11,15,25 171:10,14 172:1,18 173:3 173:10,11,15 174:25 180:4 180:15,15 182:15 185:9 185:10,12 186:5 187:3 194:7 195:9 197:24 198:6 202:23,24 204:25 208:9 208:10 209:23 212:4 216:6,18 217:10,11,12 217:24 218:5,9 219:22 220:4 221:4 222:12 222:17,20 223:4 reported 2:7 184:22 220:13 reporter 2:4,5 7:19 8:15 70:7 70:11 120:10 122:24 133:17
---	---	---	---

[reporter - review]

143:10 146:5 164:6 189:12 reporting 75:9 76:14 81:19 83:5,25 reports 5:6 20:4,8 21:13 22:4,7 25:14 25:14,16,22 26:1 28:2,13 67:2,13,14 84:4 109:16,22 161:11 165:3,6 165:8 168:9,12 171:25 184:13 219:14 represent 44:7 120:14 145:24 167:18 177:7 180:23 181:18 191:8 representation 119:10 represented 146:23 representing 166:12 request 122:15 requested 133:17 164:6 require 14:8 required 21:2 71:2 requirement 12:14	requirements 14:3 15:5 54:8 reread 53:4 research 15:10 16:16 29:3 32:24 42:11 45:12 71:11 72:2 91:25 98:7 99:8,23 104:2 137:2,11 161:2 185:17 209:11 210:18 researched 17:13 26:13 61:12 97:14 138:1 residence 4:15 residency 138:19,20 144:3 209:23 210:21 211:18 resident 122:6 resigned 49:12 201:24 resonate 118:24 resource 63:17 69:15 92:1 95:20,21,22 97:23 99:20 101:25 137:2 resources 31:17,19 32:1 87:7 98:2 197:19 200:20	respect 25:1 26:6 77:6 86:17 91:11,21 105:7 107:15 109:21 110:7 121:1 133:25 134:6 184:21 191:16 193:25 respectful 192:3 response 8:10 17:17 22:8 40:19 74:13 131:13 146:18 154:22 157:17 216:21 225:17 responses 103:13 responsive 225:18 rest 156:2 restate 27:9 88:19 94:19 result 203:19 218:15 resulting 12:6 results 29:23 203:16,21 resume 95:13 95:13 retained 9:17 9:25 23:5,8,14 24:15,16,25 37:6 51:15 53:8 55:21	57:11,17 58:9 98:4 193:24 194:2 retainer 62:2,4 62:17 retaliated 33:6 retaliation 10:5 26:4 30:19 32:22 33:7,13 39:1 45:4,9,11 45:19 46:1,16 47:1 48:5 retaliatory 27:5 30:2,9 retention 23:10 163:17 retire 213:17 retired 66:7 retrained 66:5 return 15:1 16:18 126:20 127:3 returning 187:16 revenue 118:20 review 20:23 21:5 30:20,20 41:9,10 67:15 67:18 68:10,17 69:2 71:9,10 71:19 82:22 85:17,24 109:5 109:8 111:1 112:19,22 113:1 114:8
--	---	--	--

[review - rvus]

119:16 122:5	81:10 99:23	99:10,23	217:8 218:2
126:5 127:11	105:4 107:6	106:14,18	220:18,23
128:7 138:17	120:6 140:13	108:10,11	221:8,15,18,24
139:25 143:22	186:8	109:24 110:4	222:3,8 223:14
145:13 147:1	reviews 42:13	115:12 116:1	223:18 224:9
165:6,9 175:10	175:5,11,22,25	117:8 120:1	225:11,12,22
175:11 176:7	176:3,5,9,9,17	121:18 122:21	ring 144:10
176:10 181:2	176:18,20,23	125:20 127:25	218:25
185:21 188:17	176:24 180:17	131:7,8 132:20	rise 208:15
189:14,17	181:4,23,23	133:2,3 134:11	rives 3:3
191:4 199:10	182:2,7,17	134:11,17	robinson 4:11
209:17 219:14	183:20 184:14	135:13,15	role 17:4 42:17
reviewed 20:9	193:19 199:8	138:20 140:8	66:3,11 67:2
26:21 40:9	revised 4:14	142:15 143:12	102:1 119:4
78:8 88:14,22	63:1	144:23 150:5	143:16 192:3
89:13,17 90:12	rick 4:11	150:17 151:21	192:19 205:21
102:17 103:19	right 16:2,7	153:22 158:9	213:18,19,21
104:19,23	17:16 18:3	159:21 160:6	214:13
105:3 109:2	20:15 23:11	162:4,22 163:1	roles 22:12
110:13 111:18	25:21 32:6	163:4,11,14	route 125:16,16
114:11 122:20	33:3 35:6,15	164:11,12	rubber 56:1
127:15 145:22	35:19 36:3,7	165:25 166:6	rude 178:5
147:2 149:12	38:4 40:23	171:18 173:10	182:19,20
160:4 176:2	43:10 48:1,7	174:19 175:22	rules 2:2 7:16
177:10 183:13	48:24,25 50:6	176:7 181:17	8:13 14:18,20
194:1,17	53:7,14,16	183:6 185:2,6	54:3 94:8
209:16,21,22	54:14 56:8	185:22 187:3	rupa 1:5 5:13
209:22,23	62:20,23 64:13	187:13 189:9	5:16 7:10
210:1,10,14	64:22,23 69:25	197:5 200:9,18	129:5 211:11
219:14	71:6 72:22,23	201:10,15,23	211:13
reviewer 204:4	76:6,7,23 77:1	202:20 203:2	rush 62:19,22
reviewers	78:15,16 79:14	204:15 211:2	62:23
184:5	81:17 87:18	211:17 212:14	rvu 118:16
reviewing 11:8	90:8 91:12	212:25 213:23	rvus 118:8
38:23 67:20	92:14 94:21	215:4 216:7	192:18

[s - sending]

s	schematic	secretary 62:13	165:18 175:8
s 6:1 81:6	86:12 87:16,17	section 63:12	177:17 184:14
safety 203:25	school 4:18,20	68:9 103:10	187:7,19 192:8
204:7	4:22,24 5:2,4,8	135:10 155:6	192:15,20
salary 31:6	schools 4:23	156:5 189:22	198:10,14
106:11 111:2	5:1,9	223:10	199:7 206:3
116:12 119:14	science 1:8 5:11	security 11:19	208:21 210:9
142:8 151:17	scientifically	12:25 13:1	211:21 212:2
154:23 155:24	90:22	18:4,7 19:3,6	214:23,24
160:12,13,14	scope 53:8	28:9 64:5	217:10,11
160:15 161:7	scored 175:21	65:10 92:13	218:8 219:22
161:11 213:22	scroll 104:6	see 22:21 25:9	225:3,19
216:15,16	search 12:23	51:15 52:8	seeing 64:6
222:2	29:23 30:11	55:12,14 57:24	seeking 124:25
salem 10:17	41:11 50:8	58:2,2,15	192:1
55:11 56:1	93:18,21,24	64:22,24 66:21	seem 23:11
sam 100:15	94:25 95:8,8	68:2,11 69:23	193:19
sampling 87:24	96:6,8,9,23	70:17 72:7	seemed 179:21
saw 40:8 127:9	98:5 99:1	73:19 74:2,7,8	210:9
180:7 182:2	130:4,8,11,17	75:11 76:14,17	seems 43:24
saying 38:13	165:18,23	77:14,25 79:11	116:12
86:21 94:2	searchers	82:25 101:4	seen 103:25
96:25 116:17	96:19	104:24 105:3	179:20 180:25
128:16 142:2	searching	110:10 111:17	select 85:10
172:10,11	134:2 161:15	120:20 121:16	selected 75:7
186:2 215:18	second 11:19	122:8 125:24	76:13 83:24
says 7:20 58:8	24:20 72:23	130:13 136:2	self 128:18
80:10 129:5	109:22 111:19	139:3 144:25	seminar 97:17
163:17 180:15	127:4 175:4	145:19 150:21	send 47:13,13
180:16 185:15	177:13,14,15	151:7 153:19	47:15 103:14
202:10 216:11	187:2,21	153:20 154:18	103:19 140:1
scarf 123:4	189:18 211:10	158:11,12	161:10 162:19
scenarios	212:18 223:23	159:7,15	168:16 208:7
210:18 213:25	224:9	160:14 163:2	sending 139:5
217:16		164:1,13 165:5	139:6 152:23

[sending - skill]

159:22 161:7 sense 10:10 12:8 30:4 39:6 41:15 94:10,18 109:1 149:21 214:14 215:10 sent 104:20 111:4,10 139:15,19,21 139:23 140:4 141:9,12 144:15 145:11 146:23 147:5 147:17 148:1,3 148:8,14,22 149:13,23 150:8 151:21 153:12,13,20 157:7 160:4 168:2 208:12 sentence 51:16 51:25 52:3 53:3,4 175:4 185:14 205:8 sentences 154:18 separate 36:3 99:22,25 167:4 170:13,13 184:4 195:15 separately 81:18 110:8 separates 142:9 separation 200:6 223:8	series 17:8 serve 22:25 23:14 102:22 102:22 103:2,6 103:15 104:25 105:24 171:10 171:14 served 10:25 serves 103:8 services 4:12 14:14,21 15:13 88:9 120:19 190:7 serving 21:19 21:21 set 119:21 142:13 203:13 212:15 224:6 setting 28:8,8,9 138:15 186:1 186:11,23 settle 57:5 several 14:15 15:2 28:4 38:14,15 72:25 90:24 102:20 109:14 138:9 198:6 215:15 severe 178:2 share 29:9 41:23 42:4,5 42:15,24 50:16 50:17 147:8,15 166:22 168:6,7 168:12 199:3	shared 26:20 131:3 136:3 166:19 168:10 200:14 sharing 29:13 125:2 127:23 130:19 131:20 136:5 139:14 163:4 168:13 173:14 223:7 she'll 222:6 sheets 208:4,5 shine 213:9 shoes 58:11 short 49:18,18 135:12 136:10 143:3 173:23 show 111:7 145:25 146:3 199:9 221:21 shows 177:25 shrm 101:13 shrma 101:23 shults 3:11 side 16:2 22:1 67:7,14 151:22 151:22 163:2 165:9 172:20 174:1,3 sign 95:23 96:11,12,19 signature 226:22 significant 178:10 197:22	signs 178:17 similar 28:13 32:21 47:12 59:14 60:9 93:17,22,24 94:24 95:5 111:22 113:14 160:3 184:14 184:25 185:2,3 190:21 212:22 213:20 similarities 96:7 similarly 8:20 simply 195:24 197:5 single 46:23 81:21 85:18 140:18 sit 33:3 67:1 90:19 sitting 45:16 47:24 104:10 137:25 145:16 154:16 222:4 situation 167:1 195:20 200:8 203:22 situations 28:18 99:7 102:5 six 50:1,2 63:2 63:2,2 skill 203:13
---	--	--	---

[skills - staff]

skills 14:16 15:4 16:15 63:12,13,22 86:25 88:3 91:16 159:2 178:1 181:12 214:12 215:9 216:13 skilltran 64:10 skimmed 113:6 skip 179:3 skipping 209:7 slightly 65:7 slow 179:10 small 167:3 203:1 204:18 smoothly 8:14 soc 64:17 social 11:19 12:10,25 13:1 18:4,7 19:3,6 28:8 47:14 64:5 65:10 92:13 socioeconomic 87:13 solid 95:13 somebody 89:4 151:21 211:12 223:11 somewhat 45:13 117:9 soon 114:25 sorry 15:22 17:1 22:5,5,10	31:7 32:13 39:14 47:24 55:16 58:5 60:4 73:8 75:13,18 87:14 90:16 92:3 98:16 112:5 114:23 122:12 126:25 136:13 138:12,22 146:15 150:20 159:21 164:4 167:12 170:21 188:8 199:14 211:11 212:12 220:3 223:18 224:19,20 225:6 sort 13:2,14 19:1 38:4 46:10 54:11 59:5 60:21 84:2 90:12 105:22 107:16 109:8 129:9 135:3 139:13 140:7 146:9 154:16 156:15 161:12 163:23 169:13 179:14 185:5 192:25 193:16 198:13 215:19 219:24 sorts 100:20 128:19 143:19	sought 36:21 sound 132:18 190:21 sounded 225:9 sounds 24:9 41:25 42:5 51:8 64:11 67:10 100:13 104:17 116:24 127:19 171:13 216:23 225:22 source 80:20 speak 8:25 13:25 23:13,17 24:11 34:7 39:18,21 137:14,18 143:10 172:4 speaking 69:9 99:18 134:25 138:25 219:7 speaks 79:5 137:24 specialist 219:25 specialized 52:5 specialties 5:11 specialty 96:2 98:16 119:1 219:1,18 specific 13:1 45:25 46:3,7 73:25 80:25 81:5 82:12,15	89:9 95:15 96:3 97:24 99:11,14 103:12 119:1 124:12,13 142:17,21 216:3,5 specifically 46:13,13 52:2 64:12 97:13,18 97:21 99:12,16 100:9 106:12 108:1 138:12 162:17 173:24 198:7 speed 54:11 spelled 136:9 spelling 95:13 spend 55:17 111:6 spending 203:17 sphr 31:21 split 30:14 spoke 45:13 89:5 220:15 spoken 7:18 spreadsheet 207:23 spreadsheets 144:9 149:14 151:13 staff 49:3 95:20 95:22 178:4 179:20 189:23
---	--	--	--

[staff - subjected]

190:3,10,19 200:24 203:16 203:19 210:5 staking 116:15 stand 40:25 41:18 44:13 182:6 standard 62:4 62:5 64:16 72:18,21 82:14 88:5 102:12 105:17 106:3 217:2,25 218:3 standards 76:1 93:18 94:25 95:6 standing 83:22 stands 50:14 start 11:8 15:8 19:2 33:11 125:21 163:18 177:15 200:24 started 14:1 16:22 49:23 50:2,2,5,5,10 67:4,6,10,20 163:20 181:11 212:5 starting 164:24 165:14,23 205:2 starts 157:14 159:6 161:6,7 175:3 177:15 179:4 203:10	stat 87:23 state 11:16,16 15:13 47:11,15 58:25 74:9 77:12 122:4 132:13 133:25 134:7 185:24 215:13 222:5 stated 39:10 43:23 74:5 80:17 185:20 223:4 statement 52:10 86:21 133:24 161:23 180:20 181:10 187:25 188:15 201:5 225:15 statements 25:7 29:24 49:3,3 180:2,4 180:6,9,14 181:25 201:8 201:10 209:22 states 1:1 68:10 73:15 statistic 85:7 statistics 5:7 83:3 108:1 138:7,8 214:25 stats 64:10 138:11 214:20 216:9 219:24 status 20:15,16 62:19,22,23	114:15 209:12 stay 29:25 30:3 37:4 49:15 52:5 135:23 174:5,7,10 206:19 stayed 136:7,20 stenotype 226:10 step 74:2 76:21 77:4,13,25 78:19 81:4,25 83:10 84:7 85:5 88:12 89:3,9,13,19 136:14 stephen 2:18,19 stepping 58:11 steps 15:2 29:15 75:8,9 75:11 76:13,16 76:17 78:17 79:24 80:5,15 80:25 81:2 83:24 84:1 85:10,11 86:15 86:19 88:20 90:21 91:6,10 95:9 150:7,9 steve 2:8 24:7 35:14 78:23 89:24 113:21 stick 170:24 stickies 208:3	sticking 110:22 208:14 stoel 3:3 stone 211:7 stop 75:21 story 38:20 42:17,22 48:16 48:18,19 50:7 50:15,21 51:4 straight 163:1 strategies 93:22,24 94:25 strong 130:12 structure 221:14 student 175:5 175:10 176:3,4 176:5,6,9,17 183:24 184:13 204:4,18 students 95:12 181:25 182:1,3 182:18 183:2 184:23 185:4 192:25 study 20:13 214:18 style 75:9 76:14 81:19 83:5,25 191:17,24 193:2 subject 144:7 155:20 183:4 subjected 28:11 33:13
--	--	---	--

[subjected - sworn]

37:22 39:10 44:15 subjective 183:1,5,8,9 193:10,20 submission 20:24 submissions 47:20 submit 20:3,4 20:22 47:11 220:4 submitting 63:9 subpoena 171:1 225:18 subsequent 30:10 199:25 substance 35:7 successful 190:6 suffered 32:22 52:7 suggest 122:16 158:5 178:17 suggested 192:12 suggesting 191:23 suite 2:20 3:6 sullivan 107:8 154:24 155:24 sullivancarter 157:3	sullivancotter 102:20 106:18 152:22,24 153:17,17 159:17 206:1,8 sum 26:16 115:19 125:3 125:11,12 sumant 225:1 summarized 73:18 178:5 summarizing 71:12 210:13 summary 5:7 22:22 95:3 super 118:11 supplement 133:4 supplemental 165:22 supplied 35:11 support 26:13 149:9,11 155:13 156:9 187:24 218:14 218:17 219:3,6 supporting 216:19 219:23 supports 27:23 89:9 90:20 218:22 sure 7:18 8:4 12:9 15:24 17:15 18:2 20:9 21:14	24:6 26:2,15 26:20,20 32:25 37:12,15 39:7 43:21 47:10 54:23 55:19 57:6 60:6,14 63:3 72:19 74:24 75:2 83:20 92:5 94:5 101:16 104:9,13 106:10 107:5 107:24 109:13 110:11 111:9 112:24 122:14 123:6 126:10 127:17,19 128:24 131:17 133:12 135:17 138:5 139:22 143:12,22 149:19 154:15 154:23 155:11 159:8 162:25 164:19 168:22 169:21 172:10 175:14,15 177:12 179:18 181:20 182:1 191:12 199:20 202:4 207:9 209:18 211:13 213:11 219:12 224:1 225:8	surgeon 59:3 92:14 98:15 99:4 surgeons 64:16 surgery 59:22 surgical 219:25 surprised 225:17 survey 99:18 99:20,23,24 106:15,16,19 107:21 110:9 111:21 126:3 138:11 151:3 152:24 159:23 216:6 220:12 220:13 surveys 16:16 61:6 102:13,16 103:22 104:3 104:14 106:16 107:3,13 108:2 108:15,24 110:8 111:12 112:12 142:13 144:10 148:4 156:14 220:21 susan 10:6 sw 2:8,15,20 3:6 swear 6:9 switched 115:14 sworn 6:12 226:6
--	---	---	--

[sympathize - termination]

sympathize 178:23	taken 1:17 2:3 6:4 7:14 9:11	170:6 172:5 190:22 192:22	tecum 171:1
sympathizing 131:3	9:15 14:24 48:12 84:3	194:14 200:15 203:4 210:3,23	telephone 36:9 223:21
synonymous 59:19	97:17 178:17 226:9	214:1,4 216:4 220:24 223:11	tell 6:17 7:25 34:11 99:21
synthesizing 82:23	takes 209:11	talking 8:23 34:6 36:8	102:24 107:2 129:20 131:12
system 16:5	talk 12:9 15:17 21:14 37:1,16	37:20 43:8 58:5 77:24	135:8 140:12 142:25 148:19
systems 15:12 16:6 101:9	37:19 67:25 75:4 81:4	89:1 95:7 99:24 107:25	201:5 telling 41:11
t	85:23 87:6,11 87:23,24 88:24	108:1 126:3 133:18 134:23	temper 203:15
t 226:1,1	98:2 102:8 107:7 116:4,19	135:10,15,18 135:21 136:8	tempered 178:12
table 158:7,13 159:15 220:9 220:10	117:4 123:18 129:9,13	141:24 149:23 165:17,22	tend 96:10
tables 157:16 160:13	136:13 137:5 137:20 138:8	169:22 176:3 200:25 212:5	term 106:13 118:7 131:24
take 8:5 20:10 21:1 29:15 34:1,23 40:25 41:18 44:13 54:24 55:16 74:22 78:17 80:14 115:7 120:7 121:14 129:2 150:10 155:2 160:17 170:8 174:20 182:10 189:18 202:3 205:21 206:9 208:25 215:20 224:23 225:16	147:10,13 167:23 172:6 174:17 196:4 222:25 225:18 225:21 talked 8:20 51:25 60:11 68:7 74:3 84:25 87:5 91:24 98:11 103:21 109:4 116:21 117:9 127:15 132:12 139:7 161:14 163:6 166:1 167:9 168:19	215:2 217:19 talks 196:22,24 196:25 197:1 taught 46:15 teach 181:12,13 181:13 203:12 teaching 5:15 161:2 179:6,16 179:19,23 185:17 team 95:23 192:1 teams 182:23 technical 177:25 223:23	219:24 terminate 189:21 190:11 terminated 49:9,12 56:13 56:14,14 59:25 187:16 188:21 194:20,21 195:10 201:22 termination 49:17 188:18 190:20 191:2 195:2,12 197:6 197:7,10,15 198:8,12 199:21,25 200:16 223:1,6

[terms - think]

terms 12:11 34:14 39:3 59:20 96:2 100:16 109:16 130:15,25 147:12 159:3 209:24 210:17 214:22	testimony 7:21 10:7,19 13:15 30:7 33:4,5 38:19 39:8,18 39:23 42:19 54:15,19 63:5 71:17 77:8 78:3 80:2 84:13 88:16 96:21 111:10 133:9 134:13 139:12 153:23 160:3 185:21 185:24 215:21 221:10 226:9 226:14	68:6 70:6 78:23 80:16 87:15 88:12 94:5,10,12,21 106:11 120:11 133:20 134:17 137:6 141:15 151:12 152:20 154:2 155:1,1 160:17 189:13 191:7 210:13 224:15,16 225:12	15:25 17:2,6 20:20 22:16 23:8 30:13,24 31:5 34:24 35:5 36:15 37:10,25 38:14 39:1,18 45:12 47:3 48:24 49:5,21,22 51:14,25 52:12 52:25 53:14 54:12 55:8,12 56:13,19 58:15 59:24 61:12,14 62:1 63:4,14 65:11 69:12 70:24 71:5,8 72:7,14 78:11 78:13 79:18 84:25 86:9 87:12 89:4 97:9,10 100:25 101:2 103:3 105:11 108:6,8 108:19 109:23 110:25 114:19 114:20 115:1,2 117:24 125:24 126:7,11,12,15 126:17 127:4 131:9 132:10 133:18 134:2 134:18 135:15 135:18,19 136:8,10,12
test 20:11 25:21 86:22,23 87:2	testing 15:6,7,8 63:16	thanks 24:7 133:14,16 162:12	
tested 90:23	text 129:2,5 140:11,13,16 140:22,23,25 141:7 152:22 154:3,8,10,14 155:21 156:2 159:20 160:9 161:6	theories 13:8 thereof 226:16 thick 207:16 thing 52:21 66:10 71:24 146:7 165:7 182:3	
testified 6:13 10:21 20:7 34:8 43:9 45:16 46:10 48:15 51:14 55:10,14 56:15 56:21 57:2,7 58:23,24 86:16 132:11 139:9 145:10 175:3 177:10 185:15 186:9 216:1	texted 129:24 texts 129:10 thank 6:19,22 16:1 17:20 19:1 24:1 30:23 35:13 48:15 50:10 51:2 56:5 57:10 61:24	things 38:7 43:11 51:1 52:20 60:5 68:2 71:16 85:24 86:1 117:16 128:18 128:20 132:17 143:8 169:20 171:3,15 184:5 207:8	
testify 9:7 22:2 22:2 23:2 24:3 33:22 40:17 41:18 52:25 55:14 57:4 59:13 60:22 188:23		think 9:16 10:18 14:9	
testifying 40:16 40:22 88:22 92:12 146:9 167:19			

[think - tomorrow]

137:20,21	thinking 18:23	37:5 38:6	109:14 110:23
138:24 139:9	33:4 100:2	49:25 50:3	124:8 138:9
139:12,23	143:11 145:25	55:16,17 61:8	167:25 198:6
140:2,9 141:23	151:24 152:1	61:20,20 65:5	210:18 215:15
141:25 143:23	183:2	72:12 75:20	218:22
144:9,10	third 11:22	79:12 92:22	title 211:20
146:13 148:9	84:7 179:15,15	93:1 99:11,15	225:3,3
148:20 150:1,5	225:1	99:16 101:8,8	titles 64:3
150:12,22	thorough 63:14	101:15 104:21	151:8
151:13,16	63:15	104:25 107:16	today 7:8,19,22
153:15,19	thought 49:4	107:21,23	8:4,14 9:5,8
154:4 156:19	140:17 141:24	108:3 111:6	33:4 37:6,10
159:10,19	142:19,22,24	113:5 117:21	40:16 45:10,16
160:3 162:6	148:17 150:10	117:25 119:8	62:14 64:4
163:7,7,13,14	159:17 160:5	119:12,22	67:1 68:2,7
164:14 166:4,8	169:10 175:20	133:11 135:12	90:20 94:13
169:11 170:6,6	176:24 209:5	137:8 143:25	98:3 104:11
171:4,11,12	209:18 213:16	150:17,23	122:7 123:19
173:20 174:3	thoughts 168:4	154:13 162:6	126:3 130:16
175:20 180:5	thousand 67:8	163:25 167:4	137:25 145:16
181:17,21	67:8	174:7 180:10	203:5 207:17
184:6 195:6	thread 140:13	181:10 190:4	221:10 222:5
196:3 197:3,4	144:6	192:19 193:12	224:15
197:24 198:20	three 20:9 55:9	194:24 197:7	today's 6:7
199:15,16,23	63:2,3 71:6,12	197:17,18	together 13:4,5
201:14 205:1	71:12 144:2,4	200:9 203:17	36:20 50:5
205:22 208:20	192:22 193:17	203:18 205:20	83:13 84:3
210:9 211:18	201:11,14,17	215:11 222:1	178:17 208:21
213:24 214:3,6	throw 101:5	226:5	209:24 213:3
214:8 216:22	thumb 152:13	timeline 135:2	222:10 226:8
217:3,19 220:9	time 6:20 8:6	136:19	told 94:7 108:6
220:24 221:4,6	9:14 14:8,19	times 7:15 9:10	127:7 191:22
221:18,21	15:23,23 20:14	37:25 38:15,16	223:12,13
222:3,5 223:5	24:12 26:19	68:7 98:1	tomorrow
224:8	28:5 34:6 37:5	100:21 108:6	155:5,7

[took - types]

took 7:25 41:8 44:13 46:19 48:6 51:8 109:13 124:4 138:5 144:24 150:8 152:10 152:10 163:25 184:12 206:1,8	trained 100:11 100:15 101:15 trainees 178:4 192:12 training 13:7 15:1,20,21 27:16 28:24,25 29:1 31:17,20 32:3 46:13,24 48:3 51:20 66:8 86:25 89:1 91:16 97:12,15,16,21 97:24 99:11,14 99:16,25 100:5 100:8,12,14,17 100:23 101:3,7 101:10,11,14 101:19,21 103:11 122:2 144:4 178:16 178:19	transferable 15:3 16:14 88:3 translates 118:20 transportation 87:7 traumatized 128:19 treatment 178:3 trial 7:21 23:2 33:4,5,22 37:21 40:17 59:13 60:11 202:14,15 trick 94:13 167:18 tried 140:15,15 trier 182:13 trigger 104:20 true 11:2 29:14 218:25 226:12 truth 8:1 try 8:25 16:24 22:5,6 125:13 128:17 131:5 trying 33:10 48:24 49:18 61:12 75:21 79:19 83:19 84:2 89:4 113:25 116:8 129:25 141:5 143:2,4 183:14	turn 51:12 62:24 63:10 68:8 69:5 73:13 109:3 120:17 128:25 177:13 179:13 202:19 turned 14:10 164:1 223:24 twice 110:25 148:21 150:13 two 10:16 47:18 50:5,5 61:11 88:6 98:12,23,24 106:20 124:9 135:12 144:3 154:18 163:14 169:20 183:22 206:8,13 208:21 211:7 211:19 217:16 224:7,8,17 type 4:18,20,22 4:24 5:2,4 47:12 48:6,12 56:1 60:9 62:22 102:5 108:4 130:16 144:9 149:12 149:25 180:3 185:3 194:4 201:2 types 43:13 143:14 193:19
--	--	--	---

[typewriting - used]

typewriting 226:10	135:10 148:21 189:21	undertaken 31:20 48:4	updated 55:6
typing 66:9 157:25	underlies 216:4	undertook 72:4 98:5 121:10 194:24	upside 166:7
typist 157:23	underlying 43:13 190:20 223:1,8	unequivocal 43:24 180:16 181:10	use 7:22 8:17 12:17,17 13:6 19:6 33:8 52:16,18,22 59:18 73:22,22 77:22 79:18 80:17,20,22,24 81:2 88:1 93:19 95:2 103:23 110:17 111:18 126:8 156:11,14,20 156:21,21,22 157:10 158:1,1 169:14 214:7 214:10 215:14 216:20 217:6 217:14,24,25 220:16
u		unfortunately 45:9 178:21	
u.s. 64:10 214:20 216:9	understand 7:6 7:12,23,25 24:20 33:10 34:4 36:4 40:22 76:20 78:10 79:13,17 83:19 84:2 85:9 86:3 94:14,15,18 100:6 117:7 119:9 121:8 123:13 132:2 184:1 188:24 196:16 207:4 218:2	unique 93:6,7,8 93:10,11,12 94:4	
ultimate 112:7 125:9 137:7 145:14 151:5,5 152:15 153:2 158:12 193:13 207:12 216:4		unit 118:14	
ultimately 36:12 52:17 112:13 138:1 142:11 152:7 157:9		united 1:1	
um 8:10,16,16 17:17 22:8 40:19 73:6,20 74:13 122:1 146:18 157:17 216:21	understandable 18:2	university 1:9 4:14 5:14,17 9:22 111:24 112:25 175:6 175:13,14,18 176:1,12,18 177:1,9 180:10 180:16,18 181:5 182:8,18 183:12 184:20 187:10,10 190:23 192:23 194:15 202:8 220:25,25 221:1	used 13:10 49:6 64:4 88:13 91:22 142:19 142:22 145:7 152:16 155:8 155:12,13 157:4 158:7 159:3 160:5 165:19 175:22 205:22,25 206:4 207:12 208:18 212:2 213:1,2,5 214:20 216:23
uncomfortable 178:21	understanding 78:12 110:2 117:12,15,19 121:9 127:7 144:13 152:5 217:1 220:10	unlawful 28:11	
under 11:12 14:4,18 34:4 34:25 37:13 54:3 68:17 69:2 71:2 73:14 75:13 115:15 121:23 126:20 127:3	understood 119:15 201:22 215:17	unpredictable 203:14	
	undertake 92:23 210:14	unprofessional 178:8 182:22	

[used - walter]

217:5,9 218:2 218:3,19,21 user 110:16,23 uses 89:3 using 105:5 155:15 216:2 219:23,24 usually 8:6 14:23 72:18 101:15 125:10 210:17 215:8 utilize 15:12 17:3 22:17 68:22,22 85:12 99:20 217:3 utilized 17:5 79:24 89:10 106:20 138:6 151:11 153:7 218:18 utilizing 89:16 215:13	various 95:9 108:14 117:8 161:10 vast 199:25 veracity 149:8 verbal 5:19 191:1,9 192:7 197:20 199:12 verbatim 82:1 128:15 verify 51:4,6,7 127:14 147:4 148:15 149:3 149:13 150:8 153:5 188:14 versa 52:23 version 48:20 50:11 versus 6:5 8:23 40:15 55:11 65:11,17 94:1 96:24 97:3 107:8 111:8 117:21,22 146:21 161:23 162:11 176:18 214:7 216:2 veteran 98:14 veterans 10:6 57:8,19,19,21 58:8,14 59:21 60:12,15 61:5 92:13 98:10 vice 52:23	video 6:3 159:5 223:21 224:1,2 224:3 videoconfere... 36:9 224:1 videographer 3:15 6:3 7:19 videotaped 1:16 view 193:16 viewed 146:19 150:4 158:24 viewpoints 183:1 visit 37:13 visual 147:2 voc 13:5,6 14:4 14:5 16:4 19:6 21:25 43:9 65:11 67:11 103:8 vocational 4:5 4:9 7:9 11:15 11:19,22 12:12 12:19 13:9,12 13:19,22,24 14:14,15,21 17:4,22 19:10 19:12,16,19,23 20:2 22:13,13 23:15 26:12 28:20 38:21 40:17,18 63:24 67:3,4,11,12 69:8,9 70:13	70:16 74:18 76:2,22 77:4 77:15 79:22 80:18 82:9 83:9,22 85:1 85:13 86:17 89:14 91:10 102:2 217:2 218:1,1 volume 9:3 186:2,11,22 vram 4:7 26:12 26:21 69:23 70:2,3,14 71:2 73:12 74:3 75:6 76:5 77:1 78:7,14,18 79:16 81:12 82:2 83:3,15 85:2,6,15,16 86:12 vrc 47:19
v			w
v 1:7 56:18 70:1 va 10:8 103:4 108:7 vacation 50:4,4 vague 27:8 50:18 107:18 135:5 value 118:14 179:1 varies 18:1			w 87:4 118:16 wage 16:22,23 16:23 88:10 107:22 119:13 158:5 206:2,4 206:5 219:8 wages 52:4 53:14 214:8,22 215:12 221:7 wait 121:23 walter 2:3 226:3,23

[want - work]

want 13:20 15:22 19:1 23:18 24:3 27:22 29:25 30:3 37:4,23 40:4 50:17,20 51:12 53:1 54:11 58:5,18 60:5 66:19 67:8 69:6 70:8 79:13 89:21 90:6 94:13 96:4 106:24 109:3 113:16 113:23 125:21 128:25 134:11 135:19 139:11 142:10 147:23 154:13 155:14 158:10 159:12 169:20,21 170:24 171:10 172:10 173:18 175:1 177:14 179:17 187:5 197:4 199:15 201:6 202:21 202:24 204:25 212:22 214:10 214:14,15 222:11,13 224:17,25 wanted 49:15 62:14 78:10 81:24 130:3	139:25 140:1 141:22 149:3,4 162:21 168:4 169:1 171:23 172:9 173:24 181:20 212:15 225:8 wanting 41:16 125:12,13 wants 197:1 washington 11:17 waste 154:13 way 15:25 17:14 40:16 43:18 44:2 58:12 85:16 99:22 111:11 112:11 128:6 131:18 132:5 146:1 149:5 151:2 154:22 156:19,24 160:20 179:10 181:13 191:19 194:9 223:16 ways 130:7 185:5 we've 6:19 11:4 11:5 32:19 51:25 70:12 84:25 85:2 86:7 92:2 126:3 145:1 192:22 194:14	199:16 website 150:14 153:8,24 weeds 19:2 week 67:20,21 164:2 172:6 173:12 weird 129:9 140:8 welcome 69:5 74:21,25 113:16 181:1 184:3 191:14 went 64:6,8,9 64:10 111:2 148:19 153:8 153:24 156:17 159:20 179:9 179:20 western 4:17 4:19 5:3 wish 65:18 113:15 206:13 207:1,24 witness 6:9,11 10:20 23:25 35:19 40:4 42:22 45:7 50:20 78:5 82:9 83:9 84:15 114:2,5 115:12 120:4 120:11 123:4 133:11,14,16 133:18 135:7	143:11 159:5 164:7 170:19 170:23 184:10 189:13 191:7 224:16,20 226:6,9,14,18 wonder 104:15 wondering 21:16 33:3 215:25 224:6 word 48:24,25 49:1,6 51:8 52:22 59:18 143:12 156:16 175:22 182:10 193:9 words 52:12,16 52:18 90:10,18 128:22 184:22 186:24 work 11:1,14 12:5,10 13:3 13:11,16,21 14:11,16 15:1 16:10,18,20 17:12,23,25 18:3,6,8,10,13 18:20 19:3 20:22 26:8 28:7 31:1,18 43:9 49:14,21 50:3 52:17 53:5,8,18 54:1 62:16,21 65:9 65:11,17 66:9
---	--	--	--

[work - yesterday]

67:4,7,11,12 74:1 79:13 81:21,23 88:11 91:7,16 92:12 98:3,25 101:4 103:15 107:25 108:7 113:15 118:14 121:6 125:6,20 126:20 127:3 132:9,14 134:2 134:24 155:8 160:21 165:15 182:23 185:18 186:1 191:4,23 194:18 205:21 206:11 208:8 213:8 222:22 224:13 worked 20:5,7 28:3,4,13 32:1 66:4 102:7 199:17 206:6 workers 14:1 16:5 28:8 47:14 67:6 101:4 102:2 working 14:4 14:18,22 16:3 16:7,8 19:5 62:8,13 63:15 76:25 100:17 100:23 118:2,6 156:9 162:3 163:13,18,20	164:7,8 171:8 178:19,25 186:11,25 200:13 211:15 workload 17:22 18:3 workplace 27:6 27:14 28:1,12 28:23 30:3,10 30:19 43:25 46:16 47:1 48:6 works 16:4 20:8 36:5 143:5,12,17 203:1 worried 203:17 worsened 178:22 write 80:6 113:13 141:13 171:9 175:5 205:8 217:4,7 writing 80:22 113:14 115:21 141:6 162:13 187:15 written 54:2 199:10,12 223:10 wrong 38:4 58:16 107:9 132:10 136:9 159:6 165:7 166:10 221:6	wrongful 10:4 wrongfully 56:14 wrote 73:8 119:8,12,22 143:22 156:4 174:7 219:22 wrvu 118:14,20 118:25 wrvus 190:1 y yeah 13:12 18:9,22 21:15 35:18 38:25 48:10 53:23 54:5 58:2,2 61:10,25 62:5 62:13 63:21 65:14 70:4 75:16 78:24 87:21 94:6,16 104:22 105:15 110:18 111:22 113:19 114:2,2 116:4 118:16 122:19 123:6 126:23 130:1 132:24 134:18 135:8 142:24 143:2,24 145:21 149:18 150:21 151:19 159:8 162:15 163:21 166:13 166:24 167:11	168:11 172:16 172:19 175:20 186:13 206:25 207:20 208:6 215:22 219:12 223:3 year 46:18 57:25 101:16 101:16 116:14 178:22 181:7,9 181:18,19 201:25 222:6 years 12:21 14:9,9 18:16 32:9,10 45:17 46:18,22 47:19 47:19 51:21 59:12 66:5 100:21 103:4 135:12 144:2,4 172:23,24 173:25 205:18 206:6,15,18,20 208:20 213:8 213:14,14,19 213:22 214:13 215:9,20 218:15 219:3 222:7,8 yep 144:12 yesterday 31:5 31:8,13 72:14
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[zoom - zoom]

z
zoom 223:22 224:2,3,5

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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